University of Toronto
3 1761 01062850 1

HANDBOUND
AT THE
UNIVERSITY OF
TORONTO PRESS

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/nationalprivatea00beamuoft

(24) 8614 I

THE

National and Private

"ALABAMA CLAIMS"

AND THEIR

"FINAL AND AMICABLE SETTLEMENT."

BY

CHARLES C. BEAMAN, Jr.

Printed by W. H. Moore, Washington City, D. C.

JX
238
A7
1871

Entered according to the Act of Congress, on the 31st of March, in the year 1871,

By CHARLES C. BEAMAN, Jr.,

In the Office of the Librarian of Congress at Washington.

LIBRARY
JAN 10 1968
UNIVERSITY OF TORONTO

PREFACE.

After that President Grant recommended to Congress in December last that it should authorize the appointment of a Commission to take proof of the amounts and ownership of the private claims against Great Britain, growing out of the course adopted by that Government during the rebellion, and that authority should be given for the settlement of these claims by the United States, so that the Government should have the ownership of the private claims, as well as the responsible control of all the demands against Great Britain, I began to prepare a statement for the purpose of showing what constituted the damage to the citizens of the United States by the several vessels which having been built, fitted out, dispatched and welcomed in British ports, had each contributed to the capture, burning, and destruction of the commerce of the United States.

When, however, in February the announcement was made that Great Britain and the United States had each appointed five of their most distinguished citizens to meet together at Washington and there seek to arrive at a "final and amicable settlement" of the Alabama claims and other questions of difference between the nations, there was then no immediate need of my statement, for the purposes I had originally contemplated, but I determined to keep on with what I had begun, hoping that in some way my labor might not be without good result.

For the purpose of the statement originally proposed, I thought simple divisions of the text would be sufficient to indicate my plan or to aid for reference, and with that idea I began, and what is more unfortunate the printer began, before I had seen that I should have even an excuse for printing what now turns out to be a book without apparent chapters and with but little apparent arrangement, but which I trust may not on examination be found to be such an unconnected and disarranged mass as it now appears to one who only opens its pages.

After a definition of claims and statement of the grounds upon which they have been based, I have given the history of the Queen's proclamation of neutrality dated 13th May, 1861, which the United States maintain was precipitate, unprecedented, and of great injury, I have shown the circumstances under which that proclamation was issued, the effect produced by it, the circumstances under which the United States requested that the rights granted by it might be withdrawn, and the circumstances of its final withdrawal.

From pages 49 to 149 I have told the story of the escape, reception and burnings of the Florida, Alabama, Georgia, Shenandoah and other cruisers as I have found it in the correspondence published by the two nations and in such other authorities as I have had at my command.

From pages 150 to 170 I have shown how the Alexandra was released, the Pampero seized, and Lairds rams detained.

From pages 171 to 286 I have collected and set forth the various arguments and precedents upon which the United States maintain the justice of both the private and national Alabama claims, and have then gone on to show that even now within the nine years, since the Florida escaped from Nassau, the Government of Great Britain has established its own liability for these claims by a series of successive and official acts which I have called "subsequents" in which she has shown that she neglected to perform an international obligation, when she permitted the escape of the

Alabama, Florida, Georgia and Shenandoah from her ports, and when afterwards she welcomed these scandals and reproaches to her law and neutrality with all the rights and hospitalities which she gave to the lawfully equipped war vessels of the United States. I have not confined my argument to the damage done by the four vessels and their tenders but have also considered the cases of the Tallahassee, Sumter, and other cruisers.

Having next considered the amount of damages, private and national, and knowing that no fair and equitable settlement of the Alabama claims can be made which is not in fact acceptable to the people of the United States, I have from page 293 set forth the various attempts that have been made to settle these claims, and then considering what the United States has already rejected and what Great Britain has already offered, I have ventured to present a basis of possible settlement as consistent with the expense which Lord Stanley said would be "quite worth incurring," and with what Mr. Seward said was the "lowest form of satisfaction for its national injury which the United States could accept."

I have necessarily written in considerable haste and offer my work to the public, not as having any value because here and there it presents opinions of my own, but as containing the collected and annoted opinions of others who have already maintained the justice of the Alabama claims with great force and ability.

By the table of contents hereafter given an indulgent reader may be able to refer to such statement or discussion as he may think will interest him.

CHARLES C. BEAMAN, Jr.

New York, 31*st March*, 1871.

TABLE OF CONTENTS.

PAGE

Introduction. 1–3

Alabama claims defined. 3–4

Basis of claims stated 5–7

Discussion of H. M. proclamation of 13*th May*, 1861, *giving belligerent rights to insurgents* 7–48

- Important in consideration of liability 7
- Circumstances attending issuing of 8–16
- Interviews between Mr. Dallas and Earl Russell before issuing of 8–9
- Interviews between insurgent commissioners and Earl Russell before issuing of 11, 16, 17
- Earl Russell's letter announcing decision to issue... 12
- Mr. Adams arrival at London on day of issne of...... 12
- Precipitancy of, shown by a few dates 13
- Unprecedented 15
- Confederate commissioners thank Earl Russell for .. 15
- Mr. Adams instructions to prevent recognition by... 17
- Reception of, by Mr. Adams 19
- " " United States 20
- Effect of 22–38
- Protected privateering 23
- Prevented U. S. from becoming party to declaration of Paris 25
- Effect of, as stated in correspondence and repeated demands that it should be withdrawn 26–38
- Final withdrawal of belligerent rights granted by... 38–44
- Circumstances attending withdrawal of 38–42
- Precipitate or withdrawal unjustifiable 42
- Arbitration of liability on account of 44–46
- Included in Johnson-Clarendon treaty 45
- Thought by Mr. Reverdy Johnson to be material and in itself fixing liability 46
- Conclusions as to 47
- No scourge will make American people give up belligerency question, so writes Mr. Seward 48

PAGE

British built and equipped cruisers........ 49–171
- Florida........ 49–68
- Alabama 69–100
- Georgia........ 101–106
- Shenandoah........ 107–149
- Alexandra........ 150–158
- Pampero........ 158–161
- Lairds rams........ 162–170

Florida, Case of........ 49–68
- Suspected, reported, and escapes........ 49–53
- Seizure at Nassau, trial and release 53-60
- Real character shown 60
- Nassau Judge had jurisdiction 61
- Armed from Nassau at Green Key........ .... 63, 66, 67
- Welcome at Nassau........ 64
- Supplied with coal at Nassan........ 65
- Coaled again within 30 days at Barbadoes........ 65
- Her capture at Bahia...... 68
- England liable for destruction by........ 261–268
- Damages by 290

Alabama, Case of 69–100
- Story of escape........ 69–91
- Affidavit of Passmore.. 77
- " " Roberts & Taylor........ .... 80, 81
- Opinion of Mr. Collier........ 82
- Mr. Adams efforts........ .... 85, 86
- Escape........ 86–90
- Reason for haste.. 87
- At Moelfra Bay..... 88
- Final orders to seize........ 89
- Alleged reasons for delay........ 91
- Receives her armament and commission........ 92–96
- Paymaster Yonge's affidavit giving the history of her building and cruise till her arrival at Jamaica, and showing authority and acts of Bullock and other Confederate agents at Liverpool........ 92–98
- At Cape of Good Hope, cheers and frenzy........ 99
- Sunk by Kearsarge...... 100
- Reception of, in Colonial ports 223
- Damages by 290
- England's liability for destruction by........ .... 268, 276
- Her tender the Tuscaloosa........ 100,–231,–237,–282

PAGE
Georgia, Case of 101–106
Her History as given by Mr. Baring 101
" " Mr. Forster...... 102
Suspected before her escape... 103
At Simon's Bay.......... 104
Home at Liverpool........................ 104
Registered as a British vessel...... 104
Prosecution of Jones & Highatt, for enlisting men on board.................... 105
England liable for destruction by.......... 277–279
Damages by....... 290

Shenandoah, Case of.............. 107–149
Her Equipment...... 107–111
Suspected before escape... 108–109
Capt. Corbett sent home by Consul Grattan for trial. 111
Corbett acquitted 112
Laurel not punished 113
Burnings by Shenandoah before reaching Melbourne. 113
At Melbourne.... 114-140-225
Her welcome at Melbourne...... 114
Protests of U. S. Consul against reception.......... 115
Government decides to treat as vessel of war.......... 117
Consul says United States will claim indemnity 118
Armed when she left London......... 118
Before the Legislature...... 119–124
Precedents and "Confidential instructions" 122
Refitted........ 124–127
Coaled....... 127
Increases her crew 128-140
Colonial Government afraid of Richmond Government 130
Expensive dinner, Consul insulted...... 134
Number of Sailors obtained......... 137-139
English, Scotch and Irish all Southern............... 139
"Eyes that do not see and ears that do not hear"..... 139
In North Pacific......... 140
Last days Burnings......... 140
Waddell burns ten Whalers after war was known to be ended...... 142
Returns to Liverpool...... 143
Welcome Home, Officers protected, Crew released.— 143-145
Bullock orders her home...... 147

PAGE
Registered as a British vessel.. 147
Final orders of Her Majesty to detain her by force... 147-148
Damages by 149-290
England's liability for destruction by........................ 276-282

Alexandra, Case of.. 150-158

Seizure 150,151
Decision.. 152
Acquittal under rulings of Chief Baron Pollock...... 152
Reception of verdict.. 153,154
As the Mary.. 155-157
Seized at Nassau on suspicion................................ 155
Solicitor General Counsel for Florida, and............. 156
Elects to resign office.. 157
What is shown by case... 157

Pampero, Case of.. 158-161

Building and seizure... 158
Condemnation and just decision of Scotch Judges... 160

Lairds Rams, Cases of... 162–170

Consul Dudley despondent..................................... 162
Mr. Adams says escape tantamount to participation in the war.. 163
Her Majesty's Government reply "that they cannot interfere in any way," 163
Mr. Adams answers this is war.............................. 163
Mr. Dudley states the hardship in all the cases....... 164
Mr. Sumner's speech on our Foreign Relations at New York in justificatian of war if rams were not seized.. 165
Orders to seize... 165
Story of detention and seizure of, very important as "a subsequent"... 166-170
Seizure approved by House of Commons................ 198
Solicitor General says "we have done that which we would expect others to do for us and no more." 198
Attorney General says that the Government acted "under a sense of duty." 199
Sir H. Cairns says; that if the seizure of the rams was justified, then "they ought to have done the same with regard to the Alabama and are liable."... 201

PAGE

Discussion of grounds of England's liability.................. 171–286

Liability as established by the proclamation. 171

Definition of a strict and impartial neutrality 172-174

Neutrality laws enacted for that purpose.................. 174

A neutral's duty as shown by history of neutrality laws.. 175-193

History of the United States law recognizing an international duty independent of any statute... 175-180

Compensation given to Great Britain on account of vessels illegally equipped in the United States before the existence of any neutrality law...... 180

Miranda's expedition and other violations of neutrality compensated for.............................. 181

United States law amended, and power given to seize and detain vessels on suspicion.. 182

Tenth and eleventh sections of act giving this power.. 183

Artigas case, liability for recognized, unless checked by all means in the power of the Government.. 184

United States amends her neutrality law in interest of Great Britain 186

Great Britain in 1854 admits superiority of United States law, and asks that it be vigorously enforced.. 187

Working of the United States law as shown in the case of the Maury... 188-190

English law passed as a duty, and left on the statute book for the same reason........................ 191

Conclusions from the English and United States neutrality laws......................... 193

England's duty to have prevented the escape of the Alabama and other vessels admitted................................ 194–196

Did England use all the means in her power to prevent the escape of the Alabama and other cruisers?......196-222, 258-286

Neglect under the law of nations and her own statute 196-202

Neglect made apparent by "the subsequent" in the case of Laird's rams............................... 197-202

PAGE
Story of detention and seizure of........................ 166-170
Solicitor General says "we have done that we would expect others to do for us and no more" 198
Attorney General says that the Government acted "under a sense of duty"........................ 199
Sir H. Cairns says that if the seizure of the rams was justified "they ought to have done the same with regard to the Alabama, and are liable". 200

Neglect to amend English neutrality laws.............. 202-222
Mr. Seward in 1861 suggests amendment............ 202
Earl Russell promises amendment if found necessary.. 203
Difference between the United States and English neutrality law as shown by the opinions of Sir F. Bruce and of Mr. Lush.......................... 203-205
Earl Russell admits that a neutral's duty is not confined to the execution of his neutrality law.. 205
Amendment to English neutrality law asked in November, 1862, after it had been shown to be inefficient.. 205-207
Earl Russell at first consents to certain amendments as "giving greater power to the executive"...... 206
Earl Russell afterwards refuses amendment on ground that the law "was sufficiently effective." 207
Amendment again asked in 1863...................... 208
Earl Russell on Sept. 1863, refuses "for reasons of their own.".. 209
Liverpool ship owners pray for amendment........... 209
Amendment refused because in Earl Russell's opinion the law is "effectual for all reasonable purposes.".. 210
Earl Russell explains a "scandal and reproach" to English law, and says the law ought to be made more clear and intelligible........................ 210
Refusal to amend the law claimed by the United States as one ground of England's liability...... 211

Proposals made by Great Britain to the United States since the rebellion to revise their respective laws 213
Refused by United States.............................. 214

Amendment to the neutrality laws proposed by Her Majesty's Commissioners in 1867.................. 214-222
The Commission.. 215

PAGE
The Commissioners.. 216
" Report.. 217-220
Mr. Harcourt dissents from part of the report......... 220
The report establishes England's liability for the Alabama claims.. 220-222

Did England use all the means in her power to prevent the destruction by the Florida and other vessels after they had escaped from her ports in violation of her duty?.... 3-242

Nothing was done.. 223
The reasons given therefor.. 225
What could have been done.. 226
The Queen's Proclamation could have been withdrawn.. 227-229
Mr. Harcourt's recommendation that no vessel should be admitted into a neutral port which received her commission on the high seas........................ 228

Great Britain could have seized the Florida and other vessels on their first entrance into her ports ... 229-239

Shown by argument and consideration of the United States law.. 229-231
Confederate flag did not protect the Tuscaloosa...... 232-235
Duke of Newcastle's letter saying she should have been seized.. 233
Earl Russell says that vessels of war have been seized in the United States........................ 234
The Attorney General says, that "the proper way of vindicating the offended dignity of the neutral sovereign is a mere question of practical discretion, judgment and moderation"...... 235
The Confederate flag gave no more protection to the Alabama than to the Tuscaloosa 235
A Confederate flag and Commission did not prevent the French Gouernment from stopping the Rappahannoch at Calais by a "short and summary process".. 237
Employment of force justified.. 238
Neglect to employ force renders compensation incumbent.. 239
Great Britain could absolutely have excluded the Florida and other cruisers from her ports........ 240-242

PAGE

Mr. Harcourt says such exclusion would be legitimate and dignified.......... 240
Attorney General has not the least doubt the Government had the right.......... 241
Her Majesty's Commissioners say international obligations require it.......... 241

Other means within the power of Great Britain to have prevented escape and damage.......... 242–256

Really no prosecutions of individuals for violations of the law.......... 243
No remonstrance against the Confederate agents— 244-247
Bullock gives a commission from Liverpool.......... 244
Russell makes the northern press "howl".......... 245
Evidence against the Confederate agents.......... 246
Treatment of Bullock and other Confederate agents contrasted with treatment of Genet in 1794 by President Washington.......... 248–251
Final attempts at remonstrance against acts of Confederate agents by Earl Russell in 1865.......... 251–256
Historicus presents a strange example of an "engineer hoist by his own petard".......... 251
Mr. Adams expresses surprise that no remonstrance had been earlier made.......... 252
Earl Russell's gentle remonstrance.......... 253
Remonstrance returned by Gen. Lee as not authentic 255

Statement of grounds of England's liability by all the vessels 256–258

England's liability as shown in the case of each vessel.......... 258–286

In case of the Sumter.......... 258-261
" " Florida.......... 261-268
" " Alabama.......... 268-276
" " Georgia.......... 276-279
" " Shenandoah.......... 276-282
" " Tenders of Alabama and Florida.......... 282
" " Tallahassee.......... 283
" " Nashville and other cruisers.......... 285

Damages national and private.......... 286-293

As stated by Mr. Cobden.......... 287
Shown by vessels put under British flag.......... 288
" " and other property destroyed.......... 290

PAGE
England liable whether property insured or uninsured 291
Shown by list of vessels destroyed and by war premiums paid by Willets & Co. (See Appendix.)..

Attempts to settle Alabama claims 293–307
Earl Russell declines arbitration 294
Lord Stanley's offer to refer question of "moral responsibility" for the losses of American citizens, declined because belligerency question not included 295
Mr. Seward states "lowest form of satisfaction".... 296
A conference proposed 296
Mr. Adams thinks Parliament prepared to pay 297
Johnson-Stanley negotiation and convention 297

Johnson-Clarendon Convention and its rejection 298–304
Its provisions 299
Reasons for its rejection as given by Mr. Sumner— 300-302
Objections of Mr. Upton 302
Resolution of Massachusetts Legislature, against.... 302
Mr. Johnson attempts to add National claims 302
London Times states "real defect" in 303
Mr. Bemis on its "just repudiation" 303
Mr. Fish gives the universal conviction in regard to 304
Subsequent negotiations 305-307
The President recommends that private claimants be paid by United States 307
Bill for this purpose introduced in House of Representatives 308

The Joint High Commission 308–333
Correspondence agreeing to 308-310
Object and authority of 311
Settlement offered and declined before its appointment 312
What the English Commissioners come prepared to offer without discussion 313
What settlement might be satisfactory to United States 314
An arbitration of both national and private claims on all the grounds of liability maintained by the United States 315
Private claims practically admitted and no arbitration of them necessary 317-320

PAGE
Lord Stanley sees no trouble on the merits of the question 318
He thinks the Alabama claimants would get their money after arbitration 319
Mr. J. Stuart Mill thinks no need of arbitration, but some one to say "how much" 320
Indemnification for private claims without arbitration may secure a final and amicable settlement 320-322
Mr. Forster says "we might be quite ready to give indemnity for the past" 320
He suggests Joint High Commission 321
Mr. Seward contemplates indemnification for private claims as the "lowest form of satisfaction for national injury" 321
He suggests Joint High Commission 322
Proposal of Mr. Forster and Mr. Seward compared.. 322
What indemnity asked 323
Indemnification of private claims must be definite and certain 324
Reasons why Great Britain should give this indemnification without arbitration 325, 326
Security for the future affords a good and valuable consideration for the concessions to be made by each nation 327-329
This consideration of value to Great Britain 327
" " " United States 328
Principles that can be established for the security of the future 329-331
How these principles can be established between the parties 331
Acceptance of these principles by other nations 332

Conclusion 333–350

Earl Russell's letter on Northern and Southern Confederations of North America 335
Reasons why Great Britain should desire the settlement proposed 336-346
Reasons why United States should be willing to give up national claims 346
Memories of Mount Vernon 347

List of various vessels destroyed by the several cruisers 351
Table showing war premiums paid by Willets & Co., merchants of New York 356

My purpose is to show that the so-called "Alabama Claims" are founded on justice and law, and I do not begin with the expectation that I shall add anything to the great mass of learning and argument that has been already given to the public for the same purpose, but with the hope that, I may strengthen the case of the United States and the claimants, by bringing together in this paper the evidence on which these claims are based, and the arguments by which they have been maintained.

The precedents upon which these claims rest are not numerous, but are clear and in point, and he who searches for precedents against them will find few indeed.

That England's liability to pay these claims can be established by a reference to the acts of nations, the opinions of publicists, and to the decision of Courts, I have no doubt; but all the authorities of this kind have been very fully explored on both sides, and either from the conviction that the precedents are against her, or that it would be still worse for her in the future, if the precedents should be found to be in her favor, Great Britain seems inclined to settle these claims, not upon the ground of precedent solely, but upon the ground of her responsibility under the code of international morality.

Said the London "Times" of 17th November, 1866: "Precedent is a far safer guide in ordinary litigation than in controversies between sovereign states. It can be shown that America has refused compensation in cases somewhat analogous to that of the Alabama; but unless it can also be shown that her refusal was **justified by the higher code of international morality* which rests upon the common interest of all civilized nations, little will have been gained by the demonstration."

---

* All italics are my own unless otherwise noted.

And Lord Stanley himself states the question as one of *moral responsibility.* (See *Post*, p. 4.)

After an endeavor to arrive at the facts upon which these claims are founded, they seem so many and conclusive that I hope by a simple detailed statement of events, and an examination of the changes that have taken place in the written and spoken opinions of British statesmen and judges, since the date of the Queen's proclamation of neutrality, to show that if England's executive and judicial officers had acted, from and before that date, in accordance with what they have since declared to be their duty, there would now be no Alabama claims, and thus I hope to fix upon Great Britain the legal and moral responsibility of making good the losses of American citizens by the Alabama and other Confederate cruisers.

The correspondence between the two Governments furnishes the best means to arrive at the facts, and at the arguments that have been made and can be made for and against these claims; in fact, at one time it was proposed by the English Government to submit the claims to arbitration without argument, simply upon this correspondence.

Recently there has been prepared and printed, under the direction of the Secretary of State of the United States, five volumes entitled "Correspondence Concerning Claims Against Great Britain." These volumes contain not only the correspondence, but various debates, decisions and papers pertaining to the same.

Most of the correspondence will also be found in the various volumes of United States Diplomatic Correspondence, published annually.

My object is not to state the case anew, but by quoting the language of others who have already given the facts and the arguments to show that these claims have been so ably and strongly asserted and maintained, and are so founded upon law, justice and "international morality," that to relinquish them would be a dishonor for the United States, and to pay them would be an honor for Great Britain.

I shall give references to the five volumes above mentioned.

The correspondence is mainly between Messrs. Black, Seward, Fish, Dallas, Adams, Johnson, Motley, and Dudley, on the part of the United States, and Earls Russell and Clarendon, Lord Stanley, Lord Lyons, Sir Frederick Bruce, and Sir Edward Thornton, on the part of Great Britain.

This short table will show the time during which each were in office. I do not give the exact dates:

Mr. Black, Secretary of State United States, prior to March 4, 1861.

Mr. Seward, Secretary of State United States, until March 4, 1869.

Mr. Fish, Secretary of State United States, from March, 1869.

Mr. Dallas, United States Minister to England, prior to May 13, 1861.

Mr. Adams, United States Minister to England, until July, 1868.

Mr. Johnson, United States Minister to England, until July, 1869.

Mr. Motley, United States Minister to England, until December, 1870.

Mr. Dudley, Consul at Liverpool, from 1861 to 1865.

Earl Russell, Her Majesty's Minister for Foreign Affairs, until November, 1865.

Earl of Clarendon, Her Majesty's Minister for Foreign Affairs, until June, 1866.

Lord Stanley, Her Majesty's Minister for Foreign Affairs, until December, 1868.

Earl of Clarendon, Her Majesty's Minister for Foreign Affairs, from December, 1868.

Lord Lyons, Her Majesty's Minister to the United States, till April, 1865.

Sir Frederick Bruce, Her Majesty's Minister to the United States, till September, 1867.

Sir Edward Thornton, Her Majesty's Minister to the United States, from beginning of 1868.

DEFINITION OF SO-CALLED "ALABAMA CLAIMS."

In the very beginning it is well to have a distinct definition of those claims of the United States against Great Britain which, perhaps to the disadvantage of the United States, are generally known as the "Alabama Claims." The name of a part being given to the whole.

It is needless to say that these claims are founded on events which occurred during the years from 1861 to 1866, when the United States was engaged in crushing rebellion.

On March 9th, 1867, Lord Stanley, writing to Sir Frederick Bruce, thus defines these claims:

Stanley to Bruce, Mar. 9, 1867, vol. 3, p. 668.

"The real question at issue" is "the liability of the British Government to make good the losses occasioned to American commerce by the operations of Confederate ships-of-war, in which British subjects are alleged at some time or other to have had more or less interest, and which in their character of Confederate ships-of-war, were at different times admitted into ports of Her Majesty's dominions."

And again, further on, he gives this other definition:

"The real matter at issue between the two Governments, when kept apart from collateral considerations, is whether in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British Government, and by those who acted under its authority, was such as would involve *a moral responsibility* on the part of the British Government to make good, either in whole or in part, the losses of American citizens."

Stanley to Bruce, 24 May, 1867, vol 3, p 677.

This definition did not apply only to claims arising out of the proceedings of the Alabama but applied equally to those arising out of the proceedings of the Florida, Shenandoah and Georgia, and other vessels of that description.

Seward to Adams, 12 Aug., 1867. v. 3, p. 679.

On 12th August, 1867, Mr. Seward writing to Mr. Adams referring directly to the real matter at issue as stated by Lord Stanley, said: "The President considers these terms to be at once comprehensive, and sufficiently precise to include all the claims of American citizens for depredations upon their commerce during the late rebellion which have been the subject of complaint upon the part of this Government."

Fortunately, then, both Governments are agreed in a definition.

BASIS OF CLAIM.

I quote from a letter of Mr. Adams to Earl Russell dated 20th May, 1865, to obtain a plain and concise statement of the grounds upon which the United States have rested these claims. Speaking of what he had written in a previous letter, he says:

Adams to Russell, 20 May, 1865, vol 3, p 533.

"It was my wish to maintain—1. That the act of recognition by Her Majesty's Government of insurgents as belligerents on the high seas, before they had a single vessel afloat, was precipitate and unprecedented.

2. That it had the effect of creating these parties belligerents after the recognition, instead of merely acknowledging an existing fact.

3. That this creation has been since effected exclusively from the ports of Her Majesty's Kingdom and its dependencies, with the aid and co-operation of Her Majesty's subjects.

4. That during the whole course of the struggle in America, of nearly four years in duration, there has been no appearance of the insurgents as a belligerent on the ocean, excepting in the shape of British vessels, constructed, equipped, supplied, manned, and armed in British Ports.

5. That during the same period it has been the constant and persistent endeavor of my Government to remonstrate in every possible form against this abuse of the neutrality of this Kingdom, and to call upon her Majesty's Government to exercise the necessary powers to put an effective stop to it.

6. That although the desire of Her Majesty's Ministers to exert themselves in the suppression of these abuses is freely acknowledged, the efforts which they made proved in a great degree powerless, from the inefficiency of the law on which they relied, and from their absolute refusal, when solicited, to procure additional powers to attain the objects.

7. That, by reason of the failure to check this flagrant abuse of neutrality, the issue from British ports of a number of British

vessels, with the aid of the recognition of their belligerent character in all the ports of Her Majesty's dependencies around the globe, has resulted in the burning and destroying on the ocean of a large number of merchant vessels, and a very large amount of property belonging to the people of the United States.

8. That, in addition to this direct injury, the action of these British built, manned, and armed, vessels, has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

9. That the injuries thus received by a country which has meanwhile sedulously endeavored to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification."

Seward to Adams, 14 Feb., 1866. v. 3, p. 628.

"There is not one member of this Government, and, so far as I know, not one citizen of the United States, who expects that this country will waive, in any case, the demands we have heretofore made upon the British government for the redress of wrongs committed in violation of international law," writes Mr. Seward to Mr. Adams, having in mind the letter last quoted.

Mr. Sumner in the Senate in his speech on the occasion of the rejection by that body of the Johnson-Clarendon convention, stated the grounds of England's liability as follows:

Speech, 13 April, 1869, vol 5, p 724.

"At three different stages the British Government is compromised—first, in the concession of ocean belligerency, on which all depended; secondly, in the negligence which allowed the evasion of the ship in order to enter upon the hostile expedition for which she was built, manned, armed, and equipped; and, thirdly in the open complicity which after this evasion, gave her welcome hospitality and supplies in British ports."

He speaks of the Alabama taking one ship for all.

Mr. Fish in his letter of instructions to Mr. Motley states the grounds of complaint thus:

Fish to Motley, Sen. Ex. Doc. 10 2 Sess., 41 Cong., p. 11.

"We complain that the insurrection in the Southern States, if it did not exist, was continued, and obtained its enduring vitality, by means of the resources it drew from Great Britain. We complain that, by reason of the imperfect discharge of its neutral duties on the part of the Queen's Government, Great Britain became the military, naval and financial basis of insurgent warfare against the United States. We complain of the destruction of our merchant marine by British ships, manned by British seamen, armed with British guns, dispatched from British dockyards, sheltered and harbored in British ports. We complain that by reason of the policy and the acts of the Queen's Ministers, injury incalculable was inflicted on the United States."

RECOGNITION OF BELLIGERENT RIGHTS.

Finding, then, that the same grounds of complaint and of liability have been maintained from the beginning and in both departments of the Government, I go on more particularly to show the facts upon which they each depend.

The recognition of the belligerent rights of the insurgents was given by the Queen's proclamation of neutrality of 13th May, 1861, and with that date the Alabama claims begin.

Fish to Motley, 15 May, 1869, Senate Ex. Doc. 10, 2d Session, 41 Cong. p. 4.

This part of the case, as above stated by Mr. Adams, was strongly and ably maintained by Mr. Seward, and is held by Mr. Fish, his successor, to be important in any consideration of the Alabama claims, at least "so far as it shows the beginning and animus of that course of conduct which resulted so disastrously to the United States.

"It is important in that it foreshadows subsequent events. There were other powers which were contemporaneous with England in similar concession, but it was in England only that the concession was supplemented by acts causing direct damage to the United States."

Mr. Fish instructs Mr. Motley thus:

Fish to Motley, 25 Sep. 1869.

"The assumed belligerency of the insurgents as given by the Queen's proclamation was a fiction, a war on paper only, not in the field, like a paper

Senate Ex. Doc. 20, 2 Session, 41 Cong., p. 7.

blockade; the anticipation of supposed belligerency to come, but which might never have come, if not thus anticipated and encouraged by the Queen's government.

"Indeed, as forcibly put by Mr. Adams, the Queen's declaration had the effect of creating posterior belligerency instead of merely acknowledging an actual fact, and that belligerency, so far as it was maritime, proceeding from the ports of Great Britain and her dependencies alone, with aid and co-operation of subjects of Great Britain."

* * * *

"In virtue of the proclamation, maritime enterprise in the ports of Great Britain which would otherwise have been piratical, were rendered lawful, and thus Great Britain became, and to the end continued to be, the arsenal, the navy yard, and the treasury of the insurgent Confederates."

Before Mr. Lincoln was inaugurated it was very evident that the threatened rebellion would seek to obtain recognition in Europe, and such recognition was actually obtained in Great Britain before a battle had been fought between the insurgents and the United States, or a combat even, save of the solitary and isolated attack on Fort Sumter.

PRELIMINARY CORRESPONDENCE.

The correspondence shows the circumstances which led to the recognition.

On 28th February, 1861, Mr. Black, Secretary of State, addressed a letter to Mr. Dallas, Minister of the United States at London, foreshadowing the coming rebellion, and said:

Black to Dallas, Feb. 28, 1861, vol. 1, p. 7.

> "It is not improbable persons claiming to represent the States which have thus attempted to throw off their Federal obligations will seek a recognition of their independence by the Government of Great Britain."
>
> * * *
>
> "It must be very evident that it is the right of this Government to ask of all foreign powers that the latter shall take no steps which may tend to encourage the revolutionary movement of the seceding States or increase the danger of disaffection in those which still remain loyal. The President feels assured that the Government of Her Britannic Majesty will not do anything in these

affairs inconsistent with the friendship which this Government has always heretofore experienced from her and her ancestors."

On the receipt of this dispatch of Mr. Black, Mr. Dallas called on Earl Russell, and read the same to him. The reply of Earl Russell I give in his own language:

Lord Russell to Lord Lyons, 22 March, 1861 vol. 1, p. 11.

> "I replied to Mr. Dallas shortly and verbally, stating that, even if the Government of the United States had been willing to acknowledge the separation of the seceding States as founded in right, Her Majesty's Government would have seen with great concern the dissolution of the union which bound together the members of the American Republic. That the opposition of the Government of the United States to any such separation, and the denial by them of its legality, would make Her Majesty's Government very reluctant to take any step which might encourage or sanction the separation."

On the 9th March, 1861, Mr. Seward, the successor of Mr. Black, wrote to Mr. Dallas, transmitting a copy of the inaugural address of Mr. Lincoln, and said:

Seward to Dallas, Mch. 9, '61, vol. 1, p. 9.

> "You will lose no time in submitting this address to the British Minister for Foreign Affairs, and in assuring him that the President of the United States entertains a full confidence in the speedy restoration of the harmony and unity of the Government by a firm, yet just and liberal bearing, co-operating with the deliberate and loyal action of the American people. * *
>
> "The United States have had too many assurances and manifestations of the friendship and good will of Great Britain to entertain any doubt that these considerations, and such others as your own large experience of the working of our federal system will suggest, will have their just influence with the British Government, and will prevent that Government from yielding to solicitations to intervene in any unfriendly way in the domestic concerns of our country."

On 9th April, Mr. Dallas had an interview with Earl Russell, and submitted fully the representations in the above-mentioned letter of Mr. Seward, together with the inaugural address of President Lincoln. Of this interview Mr. Dallas writes to Mr. Seward:

Dallas to Seward, 9 April, 1861, vol. 1, p. 12.

> "We conversed for some time on the question of recognizing the alleged southern confederacy, of which no representative had yet appeared, and may not appear until the end of the month.
>
> "His Lordship assured me with great earnestness that there was not the slightest disposition in the British Government, to grasp at any advantage which might be supposed

to arise from the unpleasant domestic differences in the United States, but, on the contrary, that they would be highly gratified if those differences were adjusted, and the Union restored to its former unbroken position.

"I pressed upon him, in concluding, if that were the case—and I was quite convinced it was—how important it must be that this country and France should abstain, at least for a considerable time, from doing what, by encouraging groundless hopes, would widen a breach still thought capable of being closed.

"*He seemed to think the matter not ripe for decision one way or the other, and remarked that what he had said was all that at present it was in his power to say. The coming of my successor, Mr. Adams, looked for from week to week, would doubtless be regarded as the appropriate and natural occasion for finally discussing and determining the question.* In the intermediate time, whatever of vigilance and activity may be necessary shall, of course, and as a high duty, be exerted."

A notice of motion by Mr. Gregory, in the House of Commons, made on 4th March, favoring the recognition of the Southern Confederacy had been postponed from day to day.

On 1st May, 1861, Earl Russell wrote to the Lords Commissioners of the Admiralty a dispatch, from which I extract the following to show how indefinite the knowledge was, that the English Government then possessed, of the state of affairs in the United States.

Russell to Lords Commissioners 1 May, 1861, vol. 1, p. 33.

"The intelligence which reached this country by the last mail from the United States *gives reason to suppose that a civil war between the Northern and Southern States of that confederacy was imminent, if, indeed, it might not be considered to have already begun.*

Simultaneously with the arrival of this news, a telegram purporting to have been conveyed to Halifax from the United States was received, which announced that the President of the Southern Confederacy had taken steps for issuing letters of marque against the vessels of the Northern States." * * *

On the very day this letter was written Mr. Dallas had an interview with Earl Russell, of which he wrote as follows, to Mr. Seward:

Dallas to Seward, 2 May, 1861, vol. 1, p. 34.

"The solicitude felt by Lord John Russell as to the effect of certain measures represented as likely to be adopted by the President, induced him to request me to call at his private residence yesterday. I did so. He told me that the three representatives of the Southern Confederacy were here; that he had not seen them, but was not unwilling to do so, *unofficially; (sic.)* that there existed an understanding between this Government and that of France, which would lead both to take the same course as to recognition, whatever that course might be; and he then referred to the rumor of a meditated blockade of Southern ports, and their discontinuance as ports of entry—topics on which I had heard nothing, and could therefore say nothing. *But as I informed him that Mr. Adams had apprised me of his intention to be on his way hither, in the steamship Niagara, which left Boston on the 1st May, and that he would probably arrive in less than two weeks, by the 12th or 15th inst., his Lordship acquiesced in the expediency of disregarding mere rumor, and waiting the full knowledge to be brought by my successor.*"

Mr. Dallas certainly understood from this conversation of Earl Russell that no action would be taken upon mere rumor, nor until the arrival of Mr. Adams, but we know, from what happened afterwards, that the Queen's proclamation of neutrality was issued on the very day of Mr. Adams' arrival at London and before he had been presented to the English Government.

Russell to Lyons, May 11, 1861, vol. 1, p. 37.

On Saturday, the 4th May, Earl Russell received at his "house Mr. Yancey, Mr. Mann, and Judge Rost, the three gentlemen deputed by the Southern Confederacy to obtain their recognition as an independent State."

What took place at this interview can be learned from the letter above quoted.

The Commissioners said that the Southern States had not seceded to preserve slavery, but that they might have free trade with England; that the South was very rich; that two-thirds of the whole exports of the United States were furnished by the Southern States.

Lord Russell told them that he could hold no official intercourse with them, but "that, when the question of recognition came to be formally discussed, there were two points upon which inquiry must be made; first whether the body seeking recognition could maintain its position as an independent State; secondly, in what manner it was proposed to maintain relations with foreign States."

The delegates enlarged at some length upon the first of these points, and alluded to the secession of Virginia and other intelligence favorable to their cause. They said that they had prohibited the slave trade, and an article in their constitution forbade them to revive it. They pointed to the new tariff of the United States as a proof that British manufactures would be nearly excluded from the North and said they would be freely admitted into the South, should they become independent. This was their tempting bait; they would buy English goods if England would only recognize them.

This interview took place on Saturday, 4th May, and on Monday, 6th May, Her Majesty's Government had determined that the Southern Confederacy was entitled to be considered a belligerent.

On Sunday Lord Russell thought over the interview with Mr. Yancey, and on Monday, 6th May, he had forgotten his promise to Mr. Dallas that he would wait the coming of Mr. Adams, and said in the House of Commons: "The Attorney and Solicitor General and the Queen's advocate and the Government, have come to the opinion that the Southern Confederacy of America, according to those principles, which seem to them to be just principles, must be treated as a belligerent."

The same day he wrote to Lord Lyons:

Russell to Lyons, May 6, 1861, vol. 1, p. 36.

Her Majesty's Government are disappointed in not having received from you, by the mail which has just arrived, any report of the state of affairs, and the prospects of the several parties, with reference to the issue of the struggle which appears unfortunately to have commenced between them; but the interruption of the communication between Washington and New York, sufficiently explains the non-arrival of your dispatches."

Her Majesty's Government "feel that they cannot question the right of the Southern States to claim to be recognized as a belligerent, and, as such, invested with all the rights and perogatives of a belligerent.

I think it right to give your Lordship this timely notice of the view taken by Her Majesty's Government of the present state of affairs in North America, and Her Majesty's Government do not wish to make any mystery of that view."

Adams to Seward, 17 May, 1861, vol. 1, p. 38.

On 13th May, Mr. Adams arrived at London. His letter to Mr. Seward, dated on the 17th May, gives particulars of what had happened up to that time. Mr. Dallas, after his interview with Earl Russell on the 1st May, in which His Lordship had acquiesced in the expediency of disregarding mere rumor, and waiting for full knowledge to be brought by Mr. Adams, had declined himself to enter into any discussion on the subject, because he knew that Mr. Adams was already on his way out, and would come possessed with the views of his Government, and ready to communicate them freely to the English authorities. To this end he had already concerted with Earl Russell the earliest possible measures for the presentation of Mr. Adams.

On Tuesday, 14th May, Mr. Adams and Mr. Dallas called on Earl Russell; they found he had been suddenly called away to visit his brother, the Duke of Bedford, who was very ill, and who actually died at two o'clock that day; so that no communication with Earl Russell, for the time being, was possible.

The Queen's proclamation of neutrality had been issued on the day previous, May 13th, 1861.

A FEW DATES.

On 1st May, Earl Russell, in effect told Mr. Dallas that his Government had heard "*rumors of a meditated blockade* of southern ports, and their discontinuance as ports of entry," but that it would not decide on the matter of recognition till the arrival of Mr. Adams, on the 13th or 15th instant.

On 2d May, Earl Russell said in the House of Commons: "To day we have heard that it is intended there should be a blockade of all the ports of the Southern States."

On 3d May, the London papers contained an abstract of the President's proclamation of 19th April, declaring his intention to institute a blockade. This abstract was copied from the telegraphic news in the New York Herald of 20th April, 1861.

On 4th May, Messrs. Yancey, Mann and Rost called on Earl Russell and demanded the recognition of the Southern Confederacy as an independent State, and that belligerent rights should be granted to them.

On 6th May, Monday, Earl Russell wrote to Lord Lyons, that the Confederacy was entitled to be "invested with all the rights and perogatives of a belligerent."

On the same day he communicated this determination to the English Minister at Paris.

On the same day he said in the House of Commons:

"The Attorney General and Solicitor General, and the Queen's advocate and the Government have come to the opinion that the

Southern Confederacy of America, according to those principles, which seem to them to be just principles, must be treated as a belligerent."

On 10th May, the *unofficial* copy of Mr. Lincoln's proclamation of the blockade, transmitted by Lord Lyons, 22d April, was received by the authorities at London. The *official* copy, transmitted 27th April, was not received till 14th May.

On 13th May, the United States Minister arrived at Liverpool, with instructions and information as to the exact state of the rebellion.

On 14th May, he called on Earl Russell, by appointment, and found that Her Majesty had issued a proclamation giving full belligerent rights to the Confederate States.

PRECIPITATE AND UNPRECEDENTED.

Adams to Seward, 17 May, 1861, vol. 1, p. 39.

On 17th May was not Mr. Adams justified in writing to Mr. Seward: "There seemed to be not a little precipitation in at once raising the disaffected States up to the level of a belligerent power, before it had developed a single one of the real elements which constitute military efficiency outside of its geographical limits?"

The decision to recognize the belligerency of the insurgents was certainly precipitate. It was determined on before a battle had been fought, or a single cruiser had been equipped by the insurgents. It was proclaimed on the very day of Mr. Adams' arrival, and without any consultation with him, and after a long interview with the insurgent delegates.

These delegates brought no definite news of war, but set out the great wealth of the insurgent States, and promised free trade to Great Britain.

As the precipitancy of the Queen's proclamation has been brought home to the British Government, they have sought to avoid the charge by saying that it was necessitated by the President's proclamation "declaratory of an intention to subject the Southern portion of the late Union to a rigorous blockade."(*Russell to Cowley.*) But the dates above given show that the decision to recognize preceded any reliable knowledge of the President's proclamation, and was not in consequence of such proclamation.

That decision was made before any particular knowledge "of the struggle which appears unfortunately to have commenced;" and when the "late Union" was not lamented, and the future and even present Confederacy was welcomed.

The proclamation was also unprecedented. The precedent given by Earl Russell in a debate in the House of Commons, on the 6th May, does not justify this proclamation, nor does any precedent since given.

In 1825 the British Government had recognized the belligerent rights of the provisional government of Greece, and, in consequence of that recognition, the Turkish Government made a remonstrance, to which the British Government replied: "A power or community (call it which you will) which was at war with another, and which covered the sea with its cruisers, must either be acknowledged as a belligerent or dealt with as a pirate."

This was the precedent referred to by Earl Russell, but it was not in point, for in May, 1861, not a Confederate cruiser was afloat, and their keels had not yet been laid in British ship-yards.

Great Britain erected the insurgents in the UnitedStates into a belligerent before they showed a vessel on the sea, before they organized an army on land, and before they had done anything, but declare an intention to do what they never subsequently executed.

Russell to Lords Com., 1 June, 1861 vol 4, p. 175.

A short extract from a letter of Earl Russell to the Lords Commissioners of the admiralty dated 1st June, 1861, shows that he was not certain that any war existed at that date, even a fortnight after the issue of the Queen's proclamation of neutrality, he says:

> Her Majesty's Government are, as you are aware, desirous of preserving the strictest neutrality *in the contest which appears to be imminent* between the United States and the so-styled Confederate States of North America."

"Here was Earl Russell on June 1st, declaring that a contest appears to be imminent between parties to whom, on May 6th, he had declared belligerent rights must be given.

The letters of Mr. Adams to Earl Russell, in the year 1865 dated 7th April, 20th May, 18th September, and to Earl Clarendon, of 18th November, state the position of the United States at length. Earl Russell, in reply on 4th May, 30th August, and 2d November, does the same for England, but their letters show no precedent for the precipitate decision arrived at on 13th May, 1861. (See letters, vol. 3, pp. 522, 533, 564, 615, 525, 548, 584.)

THE PROCLAMATION.

The Queen's proclamation began as follows:

Proclamation 13 May, 1861, vol. 1, p. 41.

> "Whereas we are happily at peace with all sovereign powers and States:
>
> And whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America:
>
> And whereas we, being at peace with the Government of the United States have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties;
>
> We therefore have thought fit, by [and with] the advice of our privy council, to issue this our royal prolamation;
>
> And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril."

The reading of this proclamation would have been more consistent with the results which followed from it if there had been added after the words "being at peace with the Government of the United States" the words "and being an ally with the Confederate States."

Messrs. Yancey, Rost and Mann saw what would result from this proclamation when on the 14th of August, 1861, they wrote to Lord Russell as follows:

Yancey *et al* to Russell, 14 August, 1861, vol. 1, p. 335.

> "The undersigned have witnessed with pleasure that the views which, in their first interview, they pressed upon your Lordship as to the undoubted right of the Confederate States, under the law of nations, to be treated as a belligerent power, and the monstrous assertion of the Government at Washington of its right to treat their citizens found in arms upon land or sea as rebels and pirates, have met with the concurrence of Her Britannic Majesty's Government."

This whole letter can be well read to give a better idea of what happened at the interview of these delegates with Earl Russell on May 4th. It states that the Government of the Confederate States "*commenced its career entirely without a navy,*" and further, that having "no navy, no commercial marine out of which to improvise public armed vessels to any considerable extent, the Confederate States were compelled to the issuance of Letters of Marque."

INSTRUCTIONS TO MR. ADAMS.

It may be well before considering the effect of the Queen's proclamation of neutrality to read an extract from Mr. Adams' instructions, as given him by Mr. Seward:

Seward to Adams, 10 April, 1861, vol. 1, p. 13.

"The agitators in this bad enterprise, justly estimating the influence of the European powers upon even American affairs, do not mistake in supposing it would derive signal advantage from a recognition by any of these powers, and especially Great Britain. Your task, therefore, apparently so simple and easy, involves the responsibility of preventing the commission of an act by the Government of that country which would be fraught with disaster, perhaps ruin to our own. * *

"If, as the President does not at all apprehend, you shall unhappily find Her Majesty's Government tolerating the application of the so-called seceding States, or wavering about it, you will not leave them to suppose for a moment that they can grant that application and remain the friends of the United States. You may even assure them promptly in that case that if they determine to recognize they may at the same time prepare to enter into alliance with the enemies of this Republic. You alone will represent your country at London, and you will represent the whole of it there. When you are asked to divide that duty with others diplomatic relations between the Government of Great Britain and this Government will be suspended, and will remain so, until it shall be seen which of the two is most strongly entrenched in the confidence of their respective nations and of mankind. * *

"We freely admit that a nation may, and even ought, to recognize a new State which has absolutely and beyond question effected its independence, and permanently established its sovereignty; and that a recognition in such case affords no just cause of offense to the Government of the country from which the new State has so detached itself. On the other hand we insist that a nation that recognizes a revolutionary state with a view to aid in effecting its sovereignty and independence, commits a great wrong against the nation whose integrity is thus invaded, and makes itself responsible for a just and ample redress. * * * *

In the circumstances of the present case, it is clear that a recognition of the so-called Confederate nation must be deemed equivalent to a deliberate resolution by Her Majesty's Government, that this American Union, which has so long constituted a sovereign nation shall be now permanently dissolved and cease to exist forever."

Seward to Adams, 27 April, 1861, vol. 1, p. 20.

Mr. Seward wrote again to Mr. Adams on 27th April, 1861, saying that the remarks of Earl Russell as reported by Mr. Dallas, in his letter of 9th April, (*ante p.* 9,) are by no means satisfactory to the Government of the United States; and that "Her Britannic Majesty's Government is at liberty to choose whether it will retain the friendship of this Government by refusing all aid and comfort to its enemies, now in flagrant rebellion against it, as we think the treaties existing between the two countries require, or whether the Government of Her Majesty will take the precarious benefits of a different course."

Seward to Adams, 21 May, 1861, v. 1, p. 179.

Before the news of the Queen's proclamation of neutrality had reached the United States, Mr. Seward wrote to Mr. Adams, under date 21 May, 1861, as follows:

"As to the recognition of the so-called Southern Confederacy, it is not to be made a subject of technical definition. It is, of course, direct recognition to publish an acknowledgment of the sovereignty and independence of a new power. It is direct recognition to receive its embassadors, ministers, agents, or commissioners officially. *A concession of belligerent rights is liable to be construed as a recognition of them.* No one of these proceedings will pass unquestioned by the United States in this case.

"Hitherto recognition has been moved only on the assumption that the so-called Confederate States are *de facto* a self-sustaining power. Now, after long forbearance, designed to soothe discontent and avert the need of civil war, the land and naval forces of the United States have been put in motion to repress insurrection. The true character of the pretended new State is at once revealed. It is seen to be a power existing in pronunciamento only. It has never won a field. It has obtained no forts that were not virtually betrayed into its hands or seized in breach of trust. It commands not a single port on the coast nor any highway out from its pretended capital by land. Under these circumstances Great Britain is called upon to intervene and give it body and independence by resisting our measures of suppression. British recognition would be British intervention, to create within our territory a hostile State, by overthrowing this republic itself."

RECEPTION OF THE PROCLAMATION BY MR. ADAMS.

Adams to Seward, 21 May, 1861, vol.1,p.182.

Mr. Adams had his first interview with Earl Russell on the 18th May. I quote from Mr. Adams' letter, of May 21, to Mr. Seward, giving an account of this interview, and his answer to Earl Russell, who sought to excuse or defend the Queen's proclamation. He said to Earl Russell:

"I must be permitted frankly to remark that the action taken seemed, at least to my mind, a little more rapid than was absolutely called for by the occasion. It might be recollected that the new administration had scarcely had sixty days to develope its policy; that the extent to which all departments of the Government had been demoralized in the preceding administration was surely understood here, at least in part; that the very organization upon which any future action was to be predicated was to be renovated and purified before a hope could be entertained of energetic and effective labor. The consequence had been that it was just emerging from its difficulties, and beginning to develope the power of the country to cope with this rebellion, when the British Government took the initiative, and decided practically that it is a struggle of two sides. And furthermore, it pronounced the insurgents to be in a belligerent state before they had ever shown their capacity to maintain any kind of warfare whatever, except within one of their own harbors, and under every possible advantage. It considered them a marine power, before they had ever exhibited a single privateer on the ocean. I said that I was not aware that a single armed vessel had yet been issued from any port under the control of these people. * *

"It did seem to me, therefore, as if a little more time might have been taken to form a more complete estimate of the relative force of the contending parties, and of the probabilities of any long drawn issue. And I did not doubt that the view taken by me would be that substantially taken both by the Government and the people of the United States. They would inevitably infer the existence of an intention more or less marked, to extend the struggle. For this reason it was that I made my present application to know whether such a design was or was not entertained; for in the alternative of an affirmative answer it was as well for us to know it, as I was bound to acknowledge in all frankness that in that contingency, I had nothing further left to do in Great Britain."

Mr. Adams sent to Mr. Seward on the 14th June, an account of an interview he had with Earl Russell on the 12th regarding the precipitate issue of the Queen's proclamation, he said to him :

Adams to Seward, 14 June, 1861, vol. 1, p. 198.

> "Our objection to this act was that it was *practically not an act of neutrality.* It had depressed the spirits of the friends of the government. It had raised the courage of the insurgents. We construed it as adverse, because we could not see the necessity of *such immediate haste.* These people were not a navigating people. They had not a ship on the ocean. They had made no prizes, so far as I knew, excepting such as they had caught by surprises. Even now, I could not learn that they had fitted out anything more than a few old steamboats utterly unable to make any cruise on the ocean, and scarcely strong enough to bear a cannon of any calibre."

THE FIRST RECEPTION OF THE QUEEN'S PROCLAMATION IN THE UNITED STATES.

I quote from Mr. Seward's letter to Mr. Adams of 3d June :

Seward to Adams, 3 June, 1861, vol 1, p 193.

> "Every instruction you have received from this Department is full of the evidence of the fact that the principal danger in the present insurrection which the President has apprehended, is that of foreign intervention, aid or sympathy; and especially of such intervention, aid or sympathy on the part of the Government of Great Britain."

The justice of the apprehension has been vindicated by the following facts, namely :

1. * * * *
2. * * * *
3. * * * *
4. The issue of the Queen's proclamation, remarkable.

First. For the circumstances under which it was made, namely, On the very day of your arrival in London, which had been anticipated so far as to provide for your reception by the British Secretary, but without affording you the interview promised before any decisive action should be adopted.

Second. The tenor of the proclamation itself, which seems to recognize in a vague manner indeed, but still does seem to recognize, the insurgents as a *belligerent* (*sic.*) national *power*, (*sic.*)

"That proclamation, unmodified and unexplained, would leave us no alternative but to regard the Government of Great Britain, as questioning our free exercise of all the rights of self defense guaranteed to us by our Constitution and the laws of nature and of nations to suppress the insurrection."

Mr. Seward writes to Mr. Adams on 19th June, 1861, stating that he had declined to hear Lord Lyons read or to receive official notice of his letter of instructions, announcing that Her Majesty had determined to recognize the belligerent rights of the insurgents. Speaking of that letter of instructions, Mr. Seward says:

Seward to Adams, 19 June, 1861, vol. 1, p 205.

"That paper purports to contain a decision at which the British Government has arrived, to the effect that this country is divided into two belligerent parties, of which this Government represents one, and that Great Britain assumes the attitude of a neutral between them.

"This Government could not, consistently with a just regard for the sovereignty of the United States, permit itself to debate these novel and extraordinary positions with the Government of Her Britannic Majesty; much less can we consent that that Government shall announce to us a decision derogating from that sovereignty, at which it has arrived without previously conferring with us upon the question. The United States are still solely and exclusively sovereign within the territories they have lawfully acquired and long possessed, as they have always been. They are at peace with all the world, as, with unimportant exceptions, they have always been. They are living under the obligations of the law of nations, and of treaties with Great Britain, just the same now as heretofore; they are, of course, the friend of Great Britain, and they insist that Great Britain shall remain their friend now just as she has hitherto been. Great Britain by virtue of these relations is a stranger to parties and sections in this country, whether they are loyal to the United States or not, and Great Britain can neither rightfully qualify the sovereignty of the United States, nor concede, nor recognize any rights, or interests, or power of any party, state, or section, in contravention of the unbroken sovereignty of the Federal Union. What is now seen in this country is the occurrence, by no means peculiar, but frequent in all countries, more frequent even in Great Britain than here, of an armed insurrection engaged in attempting to overthrow the regularly constituted and established Government. There is of course, the employment of force by the Government to suppress the insurrection, as every other Government, necessarily employs force in such cases.

"But these incidents by no means constitute a state of war impairing the sovereignty of the Government, creating belligerent sections, and entitling foreign states to intervene or to act as neutrals between them, or in any other way to cast off their lawful obligations to the nation thus for the moment disturbed.

"Any other principle than this would be to resolve government everywhere into a thing of accident and caprice, and ultimately all human society into a state of perpetual war.

"We do not go into any argument of fact or of law in support of the positions we have thus assumed. They are simply the suggestions of the instinct of self defence, the primary law of human action, not more the law of individual than of national life."

Mr. Seward wrote to Mr. Adams on 21st June, I make the following extract:

Seward to Adams, 21 June, 1861, vol 1, p 209.

"The whole American people so far as they *are* American, are shocked, offended and disgusted with declarations of neutrality by the British Government, by its arrangements with the French Government to deny the sovereignty of the United States, and its countenance of the insurrection, you and I, and Lord Lyons and Lord Clarendon, and Lord Palmerston will die and perhaps all of us be forgotten before the respect and affection cherished in this country towards England will have recovered the tone they had when the Prince of Wales returned nine months ago from our shores to his own."

Mr. Seward writes to Mr. Adams 1st July, 1861:

Seward to Adams, 1 July, 1861, vol 1, p 212.

"I conclude with the remark that the British Government can never expect to induce the United States to acquiesce in her assumed position of this Government as divided in any degree into two powers for war more than peace."

I have quoted enough to show how the Queen's proclamation of neutrality was received by the Government of the United States.

EFFECT OF THE PROCLAMATION.

President Grant has declared that he "recognizes the right of every power, when a civil conflict has arisen within another State, and *has attained a sufficient complexity, magnitude and completeness* to define its own relations and those of its citizens and subjects toward the parties to the conflict, so far as their rights and interests are necessarily affected by the conflict."

And so, in effect, has Mr. Seward, in his letter of instructions to Mr. Adams, before quoted, (*ante p.* 17,) but the exercise of this right brings with it responsibilities and liabilities.

It may, if precipitate and unprecedented, cause war.

No declaration of war by the United States against Great Britain resulted from the Queen's proclamation, but from the date of that proclamation the citizens of Great Britain began to build, equip and man ships of war to burn and destroy the commerce of the United States; and when the rights given by that proclamation were withdrawn nearly three hundred vessels of the United States had been captured by cruisers built, fitted out and armed from British ports, and more than seven hundred vessels of the United States had been put under the British flag, and had taken British registers in order to protect them against these same British cruisers. This may be said to have been the direct effect of the proclamation, its indirect effect by the encouragement it gave to the insurgents, and the consequent increased loss and expense to the United States, cannot be over-estimated, but it had yet another direct effect.

THE PROCLAMATION PROTECTED PRIVATEERING.

Hansard, vol. 161, p. 2082.

Said Lord Chelmsford, (Ex-Lord Chancellor,) in the House of Lords, 16th May, 1861, three days after the proclamation, "If the Southern Confederacy had not been recognized by us as a belligerent power, any Englishman aiding them by fitting out a privateer against the Federal Government would be guilty of piracy."

Said Lord Derby, in the same debate, "The Northern States must not be allowed to entertain the opinion that they are at liberty so to strain the law as to convert privateering into piracy and visit it with death. The punishment under such circumstances of persons entitled to Her Majesty's protection would not be viewed with indifference, but would receive the most serious consideration by this country."

Other Peers gave the same opinion.

From this debate we learn at once the object and result of the Queen's proclamation.

It protected "Englishmen" and "persons entitled to Her Majesty's protection" as builders of privateers and as privateersmen against the United States.

It gave them protection not only generally but in particular cases in the Courts. I instance one only:

Vol. 4, p. 409.

"The United States Mail Steamer Roanoke, with a crew of fifty men, all told, about thirty-five passengers, mails and a small cargo, left the Havana for New York at 5 p. m. on the 29th September, 1864. She had been out five hours, and was about twelve miles from the coast of Cuba when, it being the chief officer's watch on deck, two or three passengers quitted a group near the pilot house, went up to the chief officer and presented revolvers, demanding his surrender to the Confederate States, and threatened to shoot him if he resisted.

He surrendered, was put in irons and conveyed into the saloon, and in about fifteen or twenty minutes all the other ship's officers having in a similar manner been surprised in their births, were brought handcuffed into the saloon.

No resistance was offered, and no attempt was made to recapture the vessel."

Mr. Braine, the leader of this piratical expedition, and others of his party were arrested by the authorities at Bermuda but were afterwards released.

This man Braine had been concerned in a similar affair in seizing the Chesapeake, the proper consequences of which he also escaped.

Mr. Adams under instructions from Mr. Seward, protested against the release of Braine at Bermuda in this case, and in reply Earl Russell wrote him as follows:

Russell to Adams, 21 Jan'y, 1865, vol 4, p 420.

"I have had the honor to receive your letter of the 21st ult., protesting against the proceedings of Her Majesty's Colonial authorities at Bermuda in the case of the steamer Roanoke, and enclosing copies of various documents relating thereto.

These papers refer to two different complaints. The one complaint is, that persons were enlisted at Bermuda with a view to make war on a state in amity with Her Majesty. *The other complaint is, that certain passengers proceeding from Havana in the United States vessel Roanoke, when five hours from Havana on her voyage, rose on the Captain, made themselves masters of the vessel, destroyed her, and were afterwards permitted to land on the Island of Bermuda.* The answer to the first complaint is, that sufficient evidence to convict the persons accused was not produced, and that, consequently, they could not be convicted. *The answer to the second complaint is, that the persons arrested for a supposed piratical act produced a commission authorizing that act as an operation* *of war from the Government of the so-called Confederate States, which are acknowledged by Her Majesty's Government to possess belligerent rights."*

The proclamation also protected privateering in another way.

PROCLAMATION AND DECLARATION OF PARIS.

In 1854 the United States refused to become a party to the declaration of Paris, which declared that privateering is and remains abolished, unless it should also be declared and agreed, that the private property of individuals, though belonging to the belligerent States, should be exempt from seizure and confiscation by national vessels in maritime war.

This amendment in the interests of peace and neutrals was not accomplished.

Seward to Adams, 24 April, 1861, vol. 1, p. 44.

On the 25th April, 1863, Mr. Seward gave full power to Mr. Adams to bind the United States to the declaration of Paris, and Mr. Adams had this power at the time he arrived at Liverpool.

See how the Queen's proclamation prevented him from exercising the same.

Russell to Lyons, 18 May, 1861. vol. 1, p. 51.

On 18th May, five days after the proclamation which gave protection to privateering, and two days after the debate which declared that such protection was given, Earl Russell wrote to Lord Lyons, authorizing him to carry into effect any disposition which they (the United States) may evince, to recognize the declaration of Paris in regard to privateering, and then adds: "You will clearly understand that Her Majesty's Government cannot accept the renunciation of privateering on the part of the Government of the United States, if coupled with the condition that they should enforce its renunciation on the Confederate States, either by denying their right to issue letters of marque, or by interfering with belligerent operation of vessels holding from them such letters of marque, so long as they carry on hostilities according to the recognized principles, and under the admitted liabilities of the law of nations."

On the very day this letter was written, Mr. Adams had his first interview with Earl Russell, and protested against the Queen's proclamation.

Does not this letter of Earl Russell show the whole animus with which that proclamation was issued?

Russell to Adams, 19 Aug., 1861, vol. 1, p. 91.

The English Government maintained the position taken by Earl Russell to the end, and refused to allow the United States to become a party to the declaration of Paris, unless it should be added to the Convention "that Her Majesty does not intend hereby to undertake any engagement which shall have any bearing, direct or indirect, on the internal differences now prevailing in the United States."

To this condition the United States refused to assent.

Be it remembered, then, that the Queen's proclamation protected "Englishmen," in destroying the commerce of the United States, and that Great Britain refused to agree with the United States, that privateering should be abolished, unless the United States would also agree, that British Confederate privateersmen should be protected from the effect of such agreement.

Seward to Adams, 21 May, 1861, vol. 1, p. 52.

Before Mr. Seward had received news of the Queen's proclamation he wrote Mr. Adams saying Great Britain "invited us in 1856, to accede to the declaration of the Congress of Paris, of which body Great Britain herself was a member, abolishing privateering everywhere in all cases and forever. You already have our authority to propose to her our accession to that declaration. *If she refuses to receive it, it can only be because she is willing to become the patron of privateering when aimed at our destruction.*"

Great Britain refused to receive this proposition. Has she not become the patron of privateering when aimed at the destruction of the commerce of the United States?

EFFECT OF THE QUEEN'S PROCLAMATION AS STATED IN CORRESPONDENCE.

I now go on to quote at length from the published correspondence to show what has been held by the United States to have been the effect of the Queen's proclamation.

It will be seen that not only has our Government always protested against that proclamation as precipitate, unprecedented, unnecessary and injurious; but that at several times, it has also demanded the withdrawal of that proclamation, as the different ports of the Southern States came into the possession of the United States and as the insurgents were driven into a more confined territory, making this demand on the ground that this proclamation never should have been made, and should be withdrawn on account of the successes of the United States against rebels, and of the encouragement and aid given by this proclamation to rebels who continually violated England's neutrality, in and from the ports of Great Britain.

I have not room at length to state the different successes which preceded these several demands, but some of them will be found in the correspondence or will occur to the reader.

Mr. Seward wrote to Mr. Adams, on 23d January:

Seward to Adams, 23 Jan., 1862, vol. 1, p 223.

"We are embarrassed by the attitude of the British Government in regard to the entertainment it gives in its ports to pirates engaged, without advantage to any loyal or humane interest in the world, in destroying our national commerce—a commerce only less important to Great Britain than it is to the American people. The President cannot but regard this misfortune as a consequence of precipitancy on the part of the British Government, which might well have been avoided."

On February 27, 1862, Mr. Seward wrote to Mr. Adams:

Seward to Adams, 27 Feb., 1862, vol. 1, p 226.

"For our own part we must remain in the belief that the cause, and the only cause, of all the misapprehensions and embarrassments which have occurred, affecting the two countries, was an unnecessary and premature concession of belligerent rights to the insurgents. Nor do I know how just such mischiefs as are now apprehended can be prevented in any way, other than by revoking that concession. The time is favorable to that revocation. Let Great Britain resume the relations she held to us when this attempt at revolution occurred; the revolution, already rapidly declining, would in that case become extinct at once. Much might yet be restored, and speedily restored, too, of that commerce so useful to both parties which the insurrection has suspended. Much might yet be regained of that friendship and fraternal feeling which, only so recently, were regarded by both parties as auspices of their permanent security in all their relations, and of the advancement of that civilization throughout the world to whose progress both of them are pledged."

The following is an extract from a letter of Mr. Seward to Mr. Adams, dated 6th March, 1862. He said:

Seward to Adams, 6 March, '62, vol. 1, p 227.

"If Great Britain should revoke her decree conceding belligerent rights to the insurgents to-day this civil strife, which is the cause of all the derangement of those relations, and the only cause of all the apprehended dangers of that kind, would end to-morrow. The United States have continually insisted that the disturbers of their peace are mere insurgents, not lawful belligerents. This Government neither can nor is it likely to have occasion to change this position, but Her Majesty can, and it would seem that she must, sooner or later, desire to relinquish her position. It was a position taken in haste, and in anticipation of the probable success of the revolution. The failure of that revolution is sufficiently apparent. Why should not the position be relinquished, and the peace of our country thus be allowed to be restored."

From Mr. Seward's letter of 15th March, 1862, to Mr. Adams, I quote the following:

Seward to Adams, 15 March, '62, vol. 1, p 229.

"Since the date of my last dispatch the Union forces have gained decided advantages. The financial and moral, as well as the physical elements of the insurrection, seem to be rapidly approaching exhaustion. Now, when we so clearly see how much of its strength was derived from the hope of foreign aid, we are brought to lament anew the precipitancy with which foreign powers so unnecessarily conceded to it belligerent rights. The President trusts that you are sparing no efforts to convince Earl Russell that the time has come when that concession can be revoked with safety to Great Britain, and advantage to the great material interests of that country."

Mr. Seward wrote to Mr. Adams on 17th March, 1862, and said:

Seward to Adams, 17 Mch, 1862, Vol 1, p 230.

"It is difficult for us to understand here why the maritime powers in Europe do not at once rescind their decisions concerning belligerent rights to insurgents who cannot send forth or receive one single vessel either for purposes of war or of commerce."

On the 27th of March, 1862, Mr. Adams writes to Mr. Seward, saying:

Adams to Seward, 27 Mch, 1862, vol 1, p.233.

"I am bound to notice, in several of your late dispatches, a strong disposition to press upon the British Government an argument for a retraction of its original error in granting to the rebels the rights of a belligerent. There may come a moment when such a proceeding might seem to me likely to be of use. But I must frankly confess that I do not see it yet. The very last speech of Lord Russell in the House of Lords, is from beginning to end, inspired by an opposite idea. The final disruption of the United States and the ultimate recognition of the seceding States are as visible in every word of that address as they were in the letter of the same nobleman to Mr. Edwards on the 14th May last. Lord Palmerson has entertained the same conviction. * *

"The foreign policy of the Government, upon which its friends almost exclusively depend for what is left it of popularity in the nation, rests upon this basis."

In a letter from Mr. Seward to Mr. Adams, dated 14th April, 1862, he says:

Seward to Adams, 14 April, 1862, vol 1, p 236.

"While the President feels well assured that in any case the opening of our ports, following the anticipated successes of our arms, is not distant, he is impressed with the opinion that it might be safely conceded at once, if the expectations of recognition of sovereignty by the principal maritime powers, which the insurgents have built upon their first recognition as belligerents were removed. We are aware that the action of the maritime powers, in the direction proposed, must probably depend on their coming to the conviction that the insurgent cause has so far failed, as to render their ultimate success in casting off the Federal authority hopeless. It is the object of this paper to enable you to show the British Government that such is the actual situation of affairs in this country. Your dispatch, now before me, intimates the opinion on your part, that it would be indiscreet at the date of that paper to raise the question. A month full of military successes, resulting in great changes in the situation of the parties, has, however, elapsed since you received the information upon which that opinion was founded, and I am instructed to present the subject again, leaving you, however, absolutely free to determine for yourself the time and manner, when and in which, you will bring it to the attention of Earl Russell."

Mr. Adams writing to Mr. Seward on the 16th April, 1862, of an interview he had with Earl Russell, says:

Adams to Seward, 16 April, 1862, v. I, p. 238.

"I replied that, what we did desire was that foreign nations would leave the matter entirely in our hands. What we complained of was, that the course adopted was not neutrality; that it had not been so regarded by the insurgents themselves, was made apparent in the very documents published at the opening of Parliament; for it was certain that the early overtures made by the two powers to obtain a sanction of the declaration of Paris, had been construed at Richmond, and, as I thought, with reason as a ground to expect a further acknowledgment. It seemed to me they had some right to complain of a disappointment of their hopes then raised. I begged, furthermore, to advance an opinion that there was not an example in all the history of the United States or of Great Britain, nay, I might say of any civilized nation of the world, of so precipitate recognition of belligerent rights to insurgents as this one of which we were treating. If there was such an instance I should be glad to see it. Upon the basis thus made, there could be no question that much of the perseverance in resistance had rested and did still rest. A withdrawal of this recognition was the only thing that would put an end to the delusion. On the other hand, the continuance of it but served to countenance and to stimulate the efforts pertinaciously made by people in Great Britain to sustain them. This led me naturally to enlarge upon the effect produced upon the people of the United States, as well as the Government, by the frequent accounts of the manner in which vessels of all kinds were fitted out from the ports of Great Britain to assist the insurgents. Most of the consuls weekly sent home a repetition of the same story. I had even been told by one of them lately, that he believed as many as fifteen vessels were now preparing to make the voyage. Such things could not go on without giving rise to unpleasant implications, which, however unfounded, would be likely to be so far credited as to render them as dangerous as if they were facts. I remarked that His Lordship must be aware that the answer that nothing could be done was very unsatisfactory; because it might be fairly presumed that every nation that possessed the will naturally carried within itself the power to prevent abuses of its authority.

"His Lordship replied, in substance, by expressing his belief that the parties engaged in these undertakings were not so much interested in the cause of the insurgents as in the profits to be expected by running the blockade. Such attempts always would be made in similar cases. For the rest, these adventurers were compelled to take their own risk. They had the dangers of capture to encounter, and the certainty of being deprived of their rights of reclamation, The Government had no diposition to give them protection.

"I observed that this reasoning seemed hardly satisfactory or consoling to persons exposed by the effects of such acts to a long and painful and costly extension of their labors of repression. I then put it to his Lordship, distinctly, if Great Britain would be contented, should the people of Canada break out into open rebellion to find the United States promptly declare a neutrality, recognize the rebels as a belligerent power, and then from myriads of posts along the extensive line of boundary and the many harbors on the seaboard, tolerate the equipment and dispatch of numerous vessels freighted with all the materials necessary to protract the struggle? I very much doubted whether His Lordship would be perfectly quiescent under the answer that no violation of neutrality had been committed, and that no power existed to put a stop to the proceedings. His Lordship met this by saying, that he should certainly object to any such *direct* expeditions; but there was no evidence in any of the cases I had brought up, of destination or of wrong intention. In that of the Oreto, upon which I had addressed a note to him, he had directed an investigation to be made, and the authorities at Liverpool had reported that there was no ground for doubting the legality of her voyage.

"I replied that this was exactly what gave such unpleasant impressions to us in America. The Oreto by the very paper furnished from the Custom House, was shown to be laden with a hundred and seventy tons of arms, and to have persons called *troops* (*sic.*) on board, destined for Palermo *and* (*sic.*) Jamaica. The very statement of the case was enough to show what was really intended. The fact of her true destination was notorious all over Liverpool. No commercial people were blind to it. And the course taken by Her Majesty's Officers in declaring ignorance only led to an inference most unfavorable to all idea of their neutrality in the struggle."

Seward to Adams, 19 April, 1862, vol 1 p. 242.

Mr. Seward wrote to Mr. Adams on 19th April, 1862, I quote the following from his letter:

"All the grievances which disturb our people, and tend to alienate them from Great Britain, seem deducible from the concessions made by her to the insurgents at the beginning of this civil war."

Seward to Adams, 28 April, 1862, vol 1 p. 243.

In a letter from Mr. Seward to Mr. Adams, dated 28th April, 1862, he says:

"Captain Bullock, of Georgia, is understood to have written that he has five steamers built, or bought, armed, and supplied with material of war in England, which are now about leaving, or on their way, to aid the insurgents. We are prepared to meet them. But the reflection occurs, are the maritime powers of Europe, willing that the suppression of this insurrection shall be forever associated in the memory of mankind with the conviction that the sympathies of Europe were lent to the abortive revolution."

Adams to Seward, 22 May, 1862, vol 1 p 250.

Speaking of a recent interview with Earl Russell, Mr. Adams writes to Mr. Seward, and says:

"I told him that you thought the course of events, and the decided turn the fortunes of war had taken since the date of that conference, justified you in presuming that some alteration in the views of the Government must have ensued. I dwelt somewhat upon the unfavorable impression that act had made on the people of the United States. It was the true root of the bitterness towards Great Britain that was felt there. All the later acts of assistance given hereby private persons to the rebels, the knowledge of which tended to keep up the irritation, were viewed only as natural emanations from that fatal source. Every consular report that went, and there were a good many, giving details of ships and supplies and money transmitted to keep up the war served merely to remind us of the original cause of offense. I did hope, then, that he would consider, before it should be too late to be useful, the expediency of some action that might tend to soften the asperity thus engendered. I believed that in your urgency, you were actuated by a sincere desire to maintain kindly relations between the two countries, and to that end you labored to procure the removal of this unlucky obstruction. I certainly acted in that spirit myself.

"His lordship replied by saying that he did not see his way to any change of policy at present. We seemed to be going on so fast ourselves, that the question might settle itself before a great while.

*　　　*　　　*　　　*

"I replied, that, whatever might be the intent of that policy, the practical effect of it had been materially to uphold the rebels. The declaration of it at so early a moment, before the Government had had any time to organize its counteracting forces, was a prejudgment of the whole question in their favor."

On the 18th July, 1862, Mr. Seward wrote to Mr. Adams as follows:

Seward to Adams, 18 July, 1862, vol. 1, p. 257

"All our efforts are measurably counteracted by the attitude of those Governments which recognize our internal enemy as a lawful public belligerent, and thereby are understood as encouraging it to hope for recognition and intervention. Those efforts are counteracted also by an illicit British trade, which supplies that enemy with ships of war, arms, ammunition, supplies and credit."

From a letter written by Mr. Seward to Mr. Adams, on 20th October, I quote the following:

Seward to Adams, 20 Oct., 1862, v. 1, p. 259.

"Your proceeding in presenting to Her Majesty's Government a remonstrance against the practices of British subjects in arming and fitting out privateers to depredate on American commerce is approved by the President. The language and effect of your remonstrance are equally satisfactory. When at the close of the last session of Congress, it was proposed here to issue letters of marque for the protection of our commerce against such depredations by the insurgents, the proposition was relinquished on the ground that they had no ports here within control from which piratical cruisers could be sent out, and it was not apprehended that the shores of Great Britain would be suffered to be used by them for a base of operations. Yet we now see a piratical vessel built, manned, armed, equipped, and dispatched from a British port, and roaming at large on the seas, without even touching the American shores, destroying American merchantmen as if there were no treaties between Great Britain and the United States, while entrance into British ports for coal and other supplies is denied to our national armed vessels under a proclamation of neutrality. This is one of the lamentable fruits of the policy which Great Britain adopted at the beginning of the war, without previous consultation with the United States, and has persisted in ever since in opposition to their earnest and persevering remonstrances. Our agents are reporting to us new and larger military and naval preparations in British ports, and if they are to be allowed to go on to their conclusion, and to operate as has been done in the case of the 290, will not the result be that, while Great Britain avows neutrality her subjects are practically allies of the internal enemies of the United States? The President will not consent to believe that Her Britannic Majesty's Government would willingly allow a condition of affairs to occur, which would seem to leave the United States almost no hope of remaining at peace with Great Britain, without sacrifices for which no peace could ever compensate."

On the 8th December, Mr. Seward wrote to Mr. Adams, as follows:

Seward to Adams, 8 Dec., 1862, vol 1, p 260.

"Armed vessels of the United States are allowed only restricted entrance, with irritating conditions, in British ports, colonial as well as domestic, when they are sent to watch the appearance of privately-armed hostile expeditions, sent out from those ports by or through the activity of British subjects—an activity which, although forbidden, is nevertheless practiced with impunity, and in defiance of municipal law as well as international justice. It no longer rests with this country to suggest remedies for this evil. All that could be suggested on that subject has been offered and reiterated. The whole case may be summed up in this: The United States claim, and they must continually claim, that in this war they are a whole sovereign nation, and entitled to the same respect as such, that they accord to Great Britain.

"Great Britain does not treat them as such a sovereign, and hence all the evils that disturb their intercourse and endanger their friendship. Great Britain justifies her course and perseveres. The United States do not admit the justification, and so they are obliged to complain and stand upon their guard. Those in either country who desire to see the two nations remain in this relation, are not well-advised friends of either of them."

Mr. Seward wrote to Mr. Adams, on 30th July, 1863, as follows:

Seward to Adams, 30 July, 1863, vol 1, p 263.

"So we regard the present stage of this contest as re-assuring us of the ultimate deliverance of the country, and the salvation in their full extent, of its territory and its free institutions.

"At the moment, however, when we are accepting this satisfactory view, we find that we are drifting, notwithstanding our most earnest and vigorous resistance, towards a war with Great Britain. Our commerce on the high seas is perishing under the devastation of ships of war that are sent out for that purpose from British coasts, by British subjects, and we hear of new corsairs and more formidable armaments of that kind, designed even to dislodge us from the military occupation of insurgent ports and to burn and destroy our principal cities, and these armaments, it is represented to us by imposing British authorities, the Government of Great Britain is not authorized by the laws of the realm to restrain. It cannot be deemed offensive to say that at any period of our history, when we were not suffering from intestine war, these injuries would not have been borne. At least it is true they were not attempted until we were seen to have fallen upon the calamities of civil war. Great Britain might ask herself whether, if a similar opportunity for such hostilities should offer, she would consent to bear like assaults upon her commerce and her sovereignty. I know no point of political calculation more certain than this, that just what the people of Great Britain would do, under defined circumstances, in self-defense, that is what, under the same circumstances, the people in whose name I am writing must and will do in their own defense."

From a letter of Mr. Seward to Mr. Adams, dated 5th October, 1863, I quote as follows:

Seward to Adams, 5 Oct., 1863, vol 1, p 270.

"The proclamation of neutrality was a concession of belligerent rights to the insurgents, and was deemed by this Government as unnecessary and in effect as unfriendly, as it has since proved injurious to this country.

"The successive preparations of hostile naval expeditions in Great Britain are regarded here as fruits of that injudicious proclamation.

"Earl Russell adds that the United States have derived some military supplies from Great Britain, and enlisted many British subjects in their cause. But it can hardly be denied that neither such supplies nor such men would have been necessary if Great Britain had not, so far as she was concerned, first raised the insurgents to the position of belligerents. * *

"It is hardly necessary to say that the United States stand upon what they think impregnable ground when they refuse to be derogated, by any act of the British Government, from their position as a sovereign nation in amity with Great Britain, and placed upon a footing of equality with domestic insurgents, who have risen up in resistance against their authority."

Mr. Seward writing to Mr. Adams on 17th November, 1863, says:

Seward to Adams, 17 Nov., 1863, vol 1, p 270.

"I think you have rightly derived the existing embarrassments of the British Government in regard to our affairs from the one cause, the error of investing the insurgents with a belligerent character."

On 6th January, 1864, Mr. Seward wrote to Mr. Adams as follows:

Seward to Adams, 6 Jan'y, 1864, vol 1, p 272.

"I acknowledge also the receipt of your dispatch of December 11, No. 555, which is accompanied by a copy of the correspondence which has taken place between yourself and Earl Russell on the subject of the enlistment of pirates and equipment of ships of war by British subjects, and their naval operations on the high seas, against the unarmed merchantmen of the United States. The papers you have thus submitted to His Lordship prove beyond a possible doubt that a systematic naval war has been carried on for more than a year by subjects of Her Majesty from the British Island as a base, and there is every reason for believing that unremitted efforts are made, to give that warfare increased vigor and extention. It now appears from these papers that the belligerents have a regularly constituted treasury and counting houses, with agents in London for paying the wages of the British subjects who are enlisted there in this nefarious service.

* * * * *

"On our part we trace all the evils to an unnecessary, and, as we think, an anomalous recognition by Her Majesty's Government of insurgents as a naval power, who have no pretentions to that title. We desire to know whether, after all its gross abuses and injurious consequences, that concession must remain unrevoked and unmodified."

From a letter of Mr. Adams to Earl Russell dated 12th February, 1864, I quote as follows:

Adams to Russell, 12 Feb., 1864, vol 1, p 277.

"I have never admitted the idea for a moment that, in acknowledging the belligerent character of the insurgents, it was the intention of Her Majesty's Government to yield to them extraordinary facilities for the abuse of the neutrality adopted by Great Britain. But it is impossible, in the face of the facts, to deny that such has been and is the case. The very position of a belligerent implies responsibility for its action; yet it is quite apparent that thus far no means have been arrived at by which effectively to impose any restraint upon its most lawless proceedings."

In a letter from Earl Russell to Lord Lyons 26th November, 1864, he says:

Russell to Lyons, 26 Nov., 1864, vol 1, p 279.

"Such being the state of affairs, Her Majesty's Government are not prepared either to deny to the Southern States belligerent rights or to propose to Parliament to make the laws of the United Kingdom generally more stringent."

On the 10th March, 1865, Mr. Seward wrote to Mr. Adams saying:

Seward to Adams. 10 Mar., 1865, vol 1, p 285.

"I repeat and must continue to insist, that the United States cannot consent to endure indefinitely the injuries resulting directly and indirectly, from the present policy of Great Britain in regard to the existing insurrection. They cannot consent to remain derogated as a naval power to a level with a local slavery upholding rebellion, destitute of ports, courts and ships of war."

Mr. Seward writes to Mr. Adams on 4th April, 1865, and said:

Seward to Adams, 4 Ap'l, 1865, vol 1, p 287.

"I must at the same time ask you to urge upon Earl Russell that every day's persistance by Great Britain in an attitude of proclaimed neutrality by the Government which is violated with impunity, by British subjects, on the ocean and upon our borders, increases the alienation which both Governments justly deplore. The time has come when the United States may not only rightly but with serious earnestness ask relief."

Mr. Seward wrote to Mr. Adams, on the 4th April, 1865, as follows:

Seward to Adams, 4 April, 1865, vol 1, p 288.

"It is not easy to see why Her Majesty's Government should continue to recognize as a belligerent a class of men despicable in numbers. Although they recklessly trample the laws of Great Britain under their feet, while committing atrocious crimes against a friendly power, yet they can neither be surrendered to us for punishment, nor subjected to punishment by British tribunals.

"It certainly would not be an easy task to satisfy the people of the United States that in enduring such proceedings this Government exercises a just protection over the lives and property of our citizens, and a right sense of national honor."

Adams to Russell, 7 April, 1865, vol. 1, p 290.

On the 7th April, 1865, Mr. Adams writes to Earl Russell fully in the matter of the recent instructions he had received from Mr. Seward. After setting out the destruction of the United States vessels by the Shenandoah, which had recently arrived at Melbourne, he says:

"Were there any reason to believe that the operations carried on in the ports of Her Majesty's kingdom, and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented, I should not be under the painful necessity of announcing to Your Lordship the fact that my Government cannot avoid entailing upon the Government of Great Britain the responsibility for this damage. * * *

"Practically this evil had its origin in the first step taken, which can never be regarded by my Government in any other light than as precipitate, of acknowledging persons as a belligerent power on the ocean before they had a single vessel of their own to show floating upon it. The result of that proceeding has been that the power in question, so far as it can be entitled to the name of a belligerent on the ocean at all, was actually created in consequence of the recognition and not before; and all that it has subsequently attained of such a position has been through the labors of the subjects of the very country, which gave it that title in advance. Neither is the whole case stated, even now. The results equally show that the ability to continue these operations with success, during the whole term of four years, that the war has continued, has been exclusively owing to the opportunity to make use of this granted right of a belligerent in the courts, and the ports and harbors of the very power that furnished the elements of its existence in the outset. In other words, the Kingdom of Great Britain cannot but be regarded by the Government I have the honor to represent, as not only having given birth to this naval belligerent, but also as having nursed and maintained it to the present hour.

"In view of all these circumstances, I am instructed, whilst insisting on the protest heretofore solemnly entered against that proceeding, further respectfully to represent to your Lordship, that in the opinion of my Government, the grounds on which Her Majesty's Government have rested their defense against the responsibility incurred in the manner hereto stated, for the evils that have followed, however strong they might be have heretofore been considered, have now failed by a practical reduction of all the ports heretofore temporarily held by the insurgents. Hence the President looks with confidence to Her Majesty's Government for an early and an effectual removal of all existing causes of complaint on this score, whereby the foreign commerce of the United States may be again placed in a situation to enjoy the rights to which it is entitled on the ocean, in peace and safety from annoyance from the injurious acts of any of Her Majesty's subjects perpetrated under the semblance of belligerent rights."

We have now seen that to the end our Government protested against the rights of belligerency granted to the insurgents by the

Queen's proclamation as precipitate, unprecedented and harmful, and from time to time demanded the withdrawal of these rights. Finally, the withdrawal came, and it is well to consider under what circumstances.

WITHDRAWAL OF BELLIGERENT RIGHTS.

The reasons now given to justify the Queen's proclamation of 13th May, 1861, are in substance these:

First. That it was rendered necessary by President Lincoln's proclamation declaring an intention to blockade certain ports of the United States.

Second. That it was rendered necessary in order to protect Her Majesty's subjects from being punished as pirates.

If it was rendered necessary for these reasons, then, certainly, belligerent rights should not have been withdrawn until the United States had ceased to blockade these ports, nor, until all Englishmen were safe from the pains and penalties of piracy.

What were the facts?

It is not necessary to recite the events which culminated in the fall of Richmond and in the surrender of the army of General Lee. I note a few official acts.

On the 11th day of April, 1865, Mr. Lincoln issued a proclamation declaring certain ports of the United States to be closed, and further, that "all right of importation, warehousing, and other privileges, shall, in respect to the ports aforesaid, cease until they shall have again been opened by order of the President; and if, while said ports are so closed, any ship or vessel from beyond the United States, or having on board any articles subject to duties, shall attempt to enter any such port, the same, together with its tackle, apparel, furniture, and cargo shall be forfeited to the United States."

Proclamation, vol. 1, pp 367, 368.

On the same day he issued another proclamation refusing to the war vessels of foreign nations all the customary naval rights which those nations should continue to refuse to the war vessels of the United States.

Proclamation, vol. 1, p. 369.

On 11th May, 1865, Earl Russell wrote as follows to the Lords Commissioners of the Treasury:

Russell to Lords Com. 11 May, 1865, vol. 1. p. 370.

"I have the honor to acquaint your Lordships that in the existing state of the civil war in America, and the uncertainty which may be felt as to its continuance, it appears to Her Majesty's Government that the time has arrived for ceasing to enforce so much of the orders which, in pursuance of my letter of the 31st January, 1862," &c.

In accordance with this letter of withdrawal, what was known as the twenty-four hour rule was withdrawn, and war vessels of the United States were allowed to remain in English ports as long as they pleased, and to take in as much coal and other supplies as they wished.

Proclamation v, 1, p. 372.

On 10th May, Mr. Johnson issued a proclamation in part as follows:

"Whereas the President of the United States, by his proclamation of the nineteenth day of April, one thousand eight hundred and sixty-one, did declare certain States therein mentioned in insurrection against the Government of the United States; and whereas armed resistance to the authority of this Government in the said insurrectionary States may be regarded as virtually at an end, and the persons by whom that resistance, as well as the operation of insurgent cruisers, was directed, are fugitives or captives; and whereas it is understood that some of those cruisers are still infesting the high seas, and others are preparing to capture, burn, and destroy vessels of the United States:

* * * *

"And I do further proclaim and declare that if, after a reasonable time shall have elapsed for this proclamation to have become known in the ports of nations claiming to have been neutrals, the said insurgent cruisers and the persons on board of them shall continue to receive hospitality in the said ports, this Government will deem itself justified in refusing hospitality to the public vessels of such nations in ports of the United States, and in adopting such other measures as may be deemed advisable towards vindicating the national sovereignty."

Proclamation v. 1, p. 317.

On the 22d day of May President Johnson issued a proclamation declaring that, after the first day of the following July, the ports mentioned in Mr. Lincoln's proclamation of 11th April above quoted, would be open to foreign commerce, except certain ports in the State of Texas, and added:

"If, however, any vessel from a foreign port should enter any of the before named excepted ports in the State of Texas, she will continue to be held liable to the penalties prescribed by the act of Congress approved on the 13th day of July, 1861, and the persons on board of her to such penalties as may be incurred pursuant to the laws of war for trading or attempting to trade with an enemy.

"And I, Andrew Johnson, President of the United States, do hereby declare, and make known that the United States of America do henceforth disallow to all persons trading or attempting to trade in any ports of the United States, in violation of the laws thereof, all pretense of belligerent rights and privileges; and I give notice that, from the date of this proclamation, all such offenders will be held and dealt with as pirates."

On 2d June, before the reception of President Johnson's proclamation of 22d day of May, Earl Russell writes to Sir Frederick Bruce of the President's proclamation of the 10th May, a copy of which he had received from him, and also from Mr. Adams. He says:

Russell to Bruce, 2 June, 1865, vol. 1, p 378.

"It would, indeed, have been more satisfactory if the Government of the United States had accompanied the communication of the President's proclamation with a declaration that they formally renounced the exercise, as regards neutrals, of the rights of a belligerent; but Her Majesty's Government considers that, in the existing posture of affairs, the delay of any formal renunciation to that effect did not afford to neutral powers sufficient warrant for continuing to admit the possession of a belligerent character by a confederation of States which had been actually dissolved. The late president of the so-called Confederate States has been captured, and transported as a prisoner to Fort Monroe; the armies hitherto kept in the field by the Confederate States have, for the most part, surrendered or dispersed; and to continue to recognize those States as belligerents would not only be inconsistent with the actual condition of affairs, but might lead to much embarrassment and complication in the relations between the neutral powers and the Government of the United States.

* * * * *

"Her Majesty's Government will forthwith send to Her Majesty's authorities in all ports, harbors, and waters belonging to Her Majesty, whether in the United Kingdom or beyond the seas, orders henceforth to refuse admission into any such ports, harbors, and waters, of any vessel of war carrying a Confederate flag.

* * * * *

"In making this communication to the Secretary of State, you will add, that Her Majesty's Government have adopted this course under the full persuasion that the Government of the United States will, on their part, at once desist from exercising toward neutrals the rights of blockade, and of search and detention of neutral vessels on the high seas, which can be lawfully exercised by belligerents alone, and which a power not engaged in warfare cannot, under the law of nations, assume to exercise."

Sir Frederick Bruce left a copy of this dispatch with Mr. Seward, and on the 19th June Mr. Seward wrote him, saying that the President was gratified by the information contained in that dispatch, but that certain explanations and reservations therein were deemed unacceptable by the Government of the United States, and says:

Seward to Bruce, 19 June, 1865, vol. 1, p 376.

"It is hardly necessary to say that the United States do not now admit what they have heretofore constantly controverted, that the original concession of belligerent privileges to the rebels by Great Britain was either necessary or just, or sanctioned by the law of nations."

He did not give up the right to treat Englishmen as pirates, for in the same dispatch he says:

"As to all insurgent or piratical vessels found in ports, harbors, or waters of British dominions, whether they entered into such ports, harbors, or waters, before or after any new orders of Her Majesty's Government may be received by any authority of Her Majesty's Government established there, this Government maintains and insists that such vessels are forfeited to and ought to be delivered to the United States, upon reasonable application in such cases made, and that if captured at sea, under whatever flag, by a naval force of the United States, such a capture will be lawful."

This decision of Her Majesty's Government was in due time communicated by Mr. Seward to Mr. Welles, Secretary of the Navy. Mr. Welles communicates the information to Admiral Goldsborough 22d June, 1865, as follows:

Welles to Goldsboro', 22 June, 1865, vol. 1, p. 380.

"The Government of Great Britain also withdraws her concession heretofore made of a belligerent character from the insurgents, but the withdrawal of the twenty-four hours rule has not been made absolute; reciprocal measures will be extended to the vessels of that country.

"The blockade of the ports and coast of the United States will soon cease, and with the cessation of hostilities the belligerent right of search will also cease."

On 23d June, President Johnson issued a proclamation in part as follows:

Proclamation, vol. 1, p. 331.

"Whereas, by the proclamations of the President of the 19th and 27th of April, 1861, a blockade of certain ports of the United States was set on foot; but, whereas, the reasons for that measure have ceased to exist:

"Now, therefore, be it known that I, Andrew Johnson, President of the United States, do hereby declare and proclaim the blockade aforesaid to be rescinded as to all the ports aforesaid, including that of Galveston and other ports west of the Mississippi river, which ports will be open to foreign commerce on the 1st of July next, on the terms and conditions set forth in my proclamation of the 22d of May last."

"It is to be understood, however, that the blockade thus rescinded was an international measure for the purpose of protecting the sovereign rights of the United States."

From what I have above quoted, these facts are evident—

First. The belligerent rights granted by England to the insurgent were withdrawn while the blockade of Southern ports was still in force, and while the right of search was still insisted on; even while the United States threatened to treat as pirates any blockade runners who attempted to enter the blockaded ports under the claim of a neutral right.

Second. That these belligerent rights were withdrawn in the face of a proclamation of the President directing the Navy of the United States, to capture the Confederate cruisers or pirates under whatever flag.

Either the withdrawal of the belligerent rights was unjustifiable, or the Queen's proclamation of neutrality was precipitate.

When the Queen's proclamation was issued no official knowledge of any instituted blockade was in the possession of Earl Russell. No English blockade runners were liable to seizure, and none of Her Majesty's subjects were yet liable to be treated as pirates.

When the rights granted by that proclamation were withdrawn, the right of search was still insisted on by the United States, and Englishmen in blockade runners, and on board the Shenandoah, were threatened with all the pains and penalties of piracy.

The United States maintain that that proclamation was precipitate and unjustifiable. Great Britain cannot justify the granting of belligerent rights therein granted, and at the same time justify their withdrawal. The granting and the withdrawal, must each be justified by precedent, not subsequent events.

In May, 1861, Earl Russell in parliament sought to justify the granting of belligerent rights to the insurgents. On 12th June, 1865, it was necessary for him in the same place to justify their withdrawal.

Vol. 4, p. 483 & 504.

Let these two speeches be read together and the first one will be answered by the second.

Vol 1, p. 318.

Russell to Cowley, 6 May, 1861 v. 1, p. 36.

Earl Russell's letter to Earl Cowley, dated 30th May, 1865, affords a complete answer to his previous letter to the same minister dated 6th May, 1861, when read with due regard to the events that preceded them. On May 6th, 1861, Earl Russell had written that Her Majesty's Government cannot hesitate to admit, that the Confederacy is entitled to be considered as a belligerent, and as such to be invested with all the rights and prerogatives of a belligerent. This was before the Confederacy had any army in the field or any vessel at sea, or before he had any official knowledge of the President's proclamation of the blockade.

On 30th May, 1865, he knew that the Confederate States still had one army in the field, that the United States had not renounced the exercise, as regards neutrals, of the right of search, that Englishmen were afloat in the Shenandoah and in danger of being punished as pirates, and wrote thus:

Russell to Cowley, 30 May, 1865, vol 1, p 318.

"I have now to instruct Your Excellency to acquaint the French Minister that Her Majesty's Government are of opinion that, after the capture of the late President of the so-called Confederate States, and the surrender or dispersion, with one exception, of the armies hitherto kept in the field by those States, neutral *nations have no alternative*, but to consider the civil war as at an end, and to shape their course accordingly.

"It might, indeed, have been more satisfactory if the Government of the United States had already in this condition of things, formally renounced the exercise as regards neutrals of the rights of a belligerent; *but the delay of any such renunciation on their part cannot be considered to afford sufficient warrant to neutral powers to continue to admit a belligerent character in a confederation of states which has been actually dissolved.* Much embarrassment and complication in the relations between the United States and neutral powers could not fail to result from the perseverance of the latter in such a course, while no advantage could accrue to any party from it."

The United States claim that the letter of 6th May, 1861, was precipitate, and that the letter of 30th May, 1861, was necessary and justifiable. Can Great Britain maintain that the latter was precipitate, and that the Queen's proclamation was necessary and justifiable?

BELLIGERENT RIGHTS AND ARBITRATION.

After the rebellion had been put down the United States remained of the opinion that the Queen's proclamation of neutrality had not been justified on any ground of necessity or of moral right, and that therefore it was an act of wrongful intervention, a departure from the obligations of existing treaties, and without the sanction of the law of nations; and that Great Britain must either justify it, or render redress or indemnity.

Seward to Adams, 27 Aug., 1866, v. 3, p. 632.

On the 27th August, 1866, Mr. Seward wrote to Mr. Adams, transmitting a summary of the claims of the United States against Great Britain for damages by the Florida, Alabama, Georgia, Shenandoah, and other British cruisers, with a proposal for settlement by arbitration. This dispatch was communicated to Lord Stanley, but the negotiation failed because the English Government refused to submit to arbitration the alleged precipitate recognition of the Confederate States as a belligerent power, though it did not deny but that this recognition did, in some way, affect the question of liability.

The reason for refusing to arbitrate this question, appears from the dispatch of Lord Stanley to Sir Frederick Bruce, dated 30th November, 1866:

Stanley to Bruce, 30 Nov., 1866, v. 3, p. 652.

"The act complained of, while it bears very remotely on the claims now in question, is one as to which every State must be held to be the sole judge of its duty; and there is, so far as I am aware, no precedent for any Government consenting to submit to the judgment of a foreign power or of an international commission the question whether its policy has or has not been suitable to the circumstances in which it was placed."

Adams to Seward, 2 Nov., 1867, v. 3, p. 682.

We can get another view of England's sensitiveness on this point from what took place at an interview between Lord Stanley and Mr. Adams. Writing of this interview, Mr. Adams said:

> "His Lordship" said "that there really was little difficulty in coming to a settlement so far as the merits of the question itself were concerned. He was well convinced that the country would be perfectly ready to acquiesce in any decision that might be made, even though it were adverse. But he intimated that the point of pride about leaving the right of recognition in any doubt was so great that it could not be so treated."

The United States insisted that the recognition of the belligerent rights of the insurgents formed a part of the case against Great Britain, and Great Britain refused to consent that it should be so considered by an arbitrator, and therefore the negotiations ended. The result might have been different if Sir Frederick Bruce had not died before they were completed, as deeply regretted in the United States as in Great Britain.

Afterwards, in 1869, the negotiations were renewed by Lord Stanley and Mr. Reverdy Johnson, and resulted in the signing of a convention.

Vol. 3, p. 752.

It is not my purpose to discuss in any way the so-called Johnson-Clarendon treaty which was signed 14th January, 1869, and which was afterwards rejected by the Senate of the United States, farther than to show that, in a general way, it contemplated that the question of the premature recognition of belligerent rights should be considered by the Commissioners as part of the case against Great Britain. I quote from Article 2 of the Convention:

> "The official correspondence which has taken place between the two Governments respecting any claims shall be laid before the Commissioners, and they shall, moreover be bound to receive, and peruse all other written documents or statements which may be presented to them by or on behalf of the respective Governments, in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each Government, as counsel or agent for such Government, on each and every separate claim."

It was further agreed that in certain cases the whole "official correspondence" should be referred to an arbitrator or umpire.

These provisions would have brought the whole question of the "precipitate and unprecedented" recognition of belligerency before the arbitrator or umpire, for that this question is presented in the "official correspondence" appears from the numerous extracts I have already made from that correspondence.

How Great Britain came to consent to this part of the convention appears from two extracts from the correspondence. Lord Stanley writing to Sir Edward Thornton of a conversation he recently had with Mr. Johnson, says:

Stanley to Thornton, 21 October, 1868, vol. 3, p. 696.

> "In this conversation little was said as to the point on which the former negotiations broke off, viz: the claim made by the United States Government to raise before the arbiter the question of the alleged premature recognition by Her Majesty's Government of the Confederates as belligerents. I stated to Mr. Reverdy Johnson that we could not on this point depart from the position which we had taken up, but I saw no impossibility in so framing the reference as that, by mutual consent, either tacit or express, the difficulty might be avoided."

Mr. Johnson writes to Mr. Seward on 10th November, 1868, the day on which the first convention was signed, as follows:

Johnson to Seward, 10 Nov., 1868, vol. 3, p. 699.

> "It is proper that I should give, as briefly as may be necessary, my reasons for assenting to the convention, or rather to some of its provisions: 1st., you have heretofore refused to enter into an agreement to arbitrate the Alabama claims unless this Government would agree that the question of its right to acknowledge as belligerent the late so-called Southern Confederacy be also included within the arbitration. You will see by the terms of the first and fourth articles that that question, as well as every other which the United States may think is involved in such claims, is to be before the commissioners or the arbitrator. This is done by the use of general terms, and the omission of any specification of the questions to be decided."

Mr. Johnson certainly did not personally give up the part of the case founded on the recognition of belligerent rights. On the 17th February, 1869, he wrote to Mr. Seward, congratulating himself and Mr. Seward on the results of the negotiations, and said:

Johnson to Seward, 17 Feb., 1869, vol 3, p 760.

> "That their" (the commissioners) "decision will be in favor of the United States I do not doubt. The reasons for this conviction I will briefly state:
>
> "First. The recognition of belligerent rights.
>
> "The history of the world furnishes no instance of so speedy a recognition in the case of revolutionary efforts to subvert an existing Government. At the time it was made, the insurgent had no port within which to build a ship of war, large or small, or the power to get her out if she was built. Nor had they any port to which they could carry any ship that they might capture as prize of war for condemnation in a Court of Admiralty. As a war measure, resorted to simply for the purpose of suppressing the

insurrection, and with no view to impart a national character to the insurgents, the President of the United States declared certain ports under the physical control of the insurgents to be in a state of blockade; and, to prevent the inhumanity of the slaughtering of prisoners, he agreed from time to time to exchanges. But in this, again, without the slightest view of admitting the insurgents as possessing any legal rights whatever.

"The object of the blockade being the repression of the rebellion, and that being apparent from the history of the hour, this Government must have known that we were far from according to them any national existence. Supposing, then, that the proclamation of the President was known to this Government when they declared the insurgents to be belligerents, (a question of fact which I do not propose to examine,) it furnishes no justification for the action of this Government. And, if it was not justified, as I confidently believe was the case, *the act is one which bears materially upon the question whether the Government is not bound to indemnify for the losses occasioned by the Alabama and the other vessels;* for, then, that vessel and the others could not have been constructed or received in British ports, as they would have been, in the estimation of English law, as well as the law of nations, piratical vessels. They never, therefore, would have been on the ocean, and the vessels and the cargoes belonging to American citizens destroyed by them would have been in safety.

"*Upon this ground, then, independent of the question of proper diligence, the obligation of Great Britain to meet the losses seems to me to be most apparent.*"

I have now gone over the events connected with the issuing of the Queen's proclamation of neutrality. I have shown that it was hasty, and have said that it was without precedent. I have shown that the United States from the date of Mr. Adams' first interview with Earl Russell to the instructions of Mr. Fish to Mr. Motley, have declared it to be unprecedented and precipitate. I have shown the effects that have resulted from this proclamation. I have shown that at various times the United States demanded that the recognition of belligerent rights should be withdrawn, but without effect. I have shown that Great Britain at first refused to consent that her liability for the so-called Alabama claims, should be decided by any argument or liability connected with or arising out of the Queen's proclamation of neutrality. I have shown she afterwards consented that the whole question of the premature recognition of the belligerent rights of the insurgents, as it had been so strongly and fully stated by Mr. Seward and Mr. Adams in the official correspondence, should be submitted to commissioners who should decide upon her liability for the so-called Alabama claims.

It would seem to be established then, that this question of the precipitate and unprecedented granting of belligerent rights to the insurgents is to be part of the case in any negotiations or arbitrations that may hereafter take place in the matter of the so-called Alabama claims.

Mr. Seward wrote to Mr. Adams on 2d May, 1867, saying:

Seward to Adams, 2 May, 1867, vol 3, p 673.

"It is not given us to foresee what new and untried misfortune may hereafter befall our country; I can say, however, with entire confidence, that I can conceive of no scourge which may be in reserve for the American people that will ever produce a conviction on their part that the proceedings of the British Government in recognizing the Confederacy were not merely unfriendly and ungenerous, but entirely unjust."

Surely this scourge has not yet come to the American people, and let us hope it is not in store for them.

THE BRITISH BUILT AND EQUIPPED CRUISERS.

The Florida, the Alabama, the Georgia, and the Shenandoah, were each built and equipped in the ports of Great Britain; other cruisers escaping from the ports of the insurgents were received and harbored in the ports of Great Britain, and the United States maintain that England is liable for damages occasioned to citizens of the United States by all of these vessels; but for the present, I confine myself to the consideration of her liability for damages caused by the four vessels above-mentioned.

The facts attending the building, equipping, escape, arming, and reception of those cruisers were somewhat different in each case; and an attempt has been made to argue that though England might be liable for damages occasioned by one or more, she was not liable for damages by the others. Before arguing to show her liability for damages from either of these cruisers, it is well to have as full knowledge as possible of the facts in regard to them all. I, therefore, go on to state these facts somewhat fully, considering the case of each vessel in the order of time at which she left the ports of Great Britain.

THE FLORIDA.

This vessel was an iron screw steam gunboat, built at Liverpool by Miller and Sons for Fawcet, Preston & Co., engineers of Liverpool. She was called the Oreto while being built.

The pretense was, that she was built for Messrs. Thomas Bros., of Palermo.

Dudley to Adams Feb. 17, 1862, v. 2, p. 594.

On 17th February, 1862, Mr. Dudley wrote Mr. Adams, (he had written several letters before in the same manner,) saying that the Oreto was still at Liverpool; and after describing the warlike character of the vessel, he says:

"I have obtained information from many different sources, all of which goes to show that she is intended for the Southern Confederacy." Saying further that the gun-carriages had been taken on board, and that Fraser, Trenholm & Co. had made advances upon her.

Adams to Russell, 18 Feb., 1862, v. 2, p. 593.

Mr. Adams sent to Earl Russell extracts of Mr. Dudley's letter to him, saying that he had no doubt of the intentions of the vessel; and that the parties were the same who had been engaged in blockade running, and he offered, if needed, to procure "further evidence in a more formal way."

Russell to Adams, 19 Feb,, 1862, v. 2, p. 595.

On 19th February, Earl Russell acknowledged the receipt of this letter.

Russell to Adams, 26 Feb., 1862, v. 2, p. 595.

On 26th February, Earl Russell transmitted to Mr. Adams the report of the Commissioners of Customs, describing the Oreto, and saying, that she was pierced for four guns, that she was claimed to have been built for the Italian Government; that she had not been armed, and that she would be watched.

On 22d March the Oreto sailed.

Two letters of Mr. Dudley to Mr. Seward show how much was known about the Oreto, and how little she watched by the Commissioners of Customs, or more particularly by the Collector Edwards.

Dudley to Seward, 1 & 5 March, 1862, v. 2, p. 596.

"She had taken on a large quantity of provisions, enough for a long cruise; they are getting as many southern sailors as they can. They want 130 men if they can procure them. They are only waiting for the arrival of the West India boat at Southampton; the captain who is to command her is to come by that boat. Her transfer will be made outside. The foreman of Fawcet, Preston & Co., told a young man, formerly in the employ of that company, the guns for the Oreto were to be shipped to Palermo, and put on board at that place; while another person in their employ told one of my men that the guns had been sent on the steamer Bermuda, and were to be landed at Bermuda. Both of these persons in the employ of Fawcet, Preston & Co. stated that she was intended for the Confederates."

Dudley to Adams, 22 Mar. 1862, v. 2, p. 602.

On March 22d, Mr. Dudley writes to Mr. Adams giving very important information as to who was to command the Oreto; and of the reception on board the Oreto of officers who had come over in the Steamer Annie Childs, from Wilmington, N. C., he says:

Dudley to Adams, 22 March, '62, vol. 2, p 601.

"The Oreto is still in the river. A flat-boat has taken part of her armament to her. A part of the crew of the steamer Annie Childs, which came to this port loaded with cotton, have just left my office. They tell me that Captain Bullock is to command the Oreto, and that four other officers for this vessel came over in the Childs with them. The names of three are Yonge, Law, and Maffet or Moffit; the fourth was called Eddy. The two first are lieutenants, and the two last named midshipmen. They further state that these officers during the voyage wore naval uniforms; that they came on the Childs at a place called Smithville, some twenty miles down the river from Wilmington; that it was talked about and understood by all on board that their object in coming was to take command of this vessel which was being built in England for the Southern Confederacy. They further state that it was understood in Wilmington before they left that several war vessels were being built in England for the South. As they were coming up the river in the Childs, as they passed the Oreto she dipped her flag to the Childs. I have had this last from several sources, and the additional fact that the same evening after the arrival of this steamer a dinner was given on the Oreto to the officers who came over in the Childs. I understand she will make direct for Madeira and Nassau."

The man Yonge, named in this dispatch, became paymaster on the Alabama. Low (Lowe) went on board the Oreto to Nassau, having general charge of her up to that time, and Moffit afterwards commanded her.

Adams to Russell, 25 Mar., 1862, v. 2, p. 599.

On the 25th of March, Mr. Adams transmitted to Earl Russell a letter of Mr. Dudley, and assured him that the object of the Oreto was to make war on the United States, and that all the parties, thus far known to be connected with the undertaking, are either directly employed by the insurgents in the United States of America, or residents of Great Britain, notoriously in sympathy with, and giving aid and comfort to them on this side of the water. As this letter is perhaps the first time that Mr. Adams stated what, in part, is the position of the United States in regard to all these vessels, I quote at length from his letter:

"It is with the deepest regret that the President directs me to submit to Her Majesty's Government a representation of the unfortunate effect produced upon the minds of the people of the United States from the conviction that nearly all of the assistance that is now obtained from abroad by the persons still in arms against the Government, and which enables them to continue the struggle, comes from the kingdom of Great Britain and its dependencies. Neither is this impression relieved by the information that the existing municipal laws are found to be insufficient, and do not furnish means of prevention adequate to the emergency. The duty of nations in amity with each other, would seem to be plain, not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficacy of their prohibitory policy. Such is the view which my Government has been disposed to take of its own obligations in similar cases, and such, it doubts not, is that of all foreign nations with which it is at peace. It is for that reason I deprecate the inference that may be drawn from the issue of the investigation which your Lordship caused to be made in the case of the Oreto, should that vessel be ultimately found issuing safely from this kingdom, and preying on the commerce of the people of the United States."

On 27th March, Earl Russell acknowledges Mr. Adams' letter of the 25th, and says:

Russell to Adams, 27 March, '62. vol 2, p 602.

"I agree with you in the statement that the duty of nations in amity with each other is not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficacy of their prohibitory policy."

Russell to Adams, 8 April, 1862, vol 2, p 604.

On 8th April, 1862, Earl Russell transmits to Mr. Adams the report of the Commissioners of Customs to the effect that the Oreto was violating no law. Yet this report said that she carried fifty-two men—passengers or troops—guns, 178 tons of arms.

Adams to Seward, 16 April, 1862, vol 2, p 606.

On 16th April, Mr. Adams writes to Mr. Seward, giving the results of an interview with Earl Russell:

"I yesterday succeeded in obtaining the expected conference with Earl Russell on the subject of the Oreto, upon which I had addressed a note to him. He said that he had directed an investigation to be made, and the authorities at Liverpool had reported that there was no ground for doubting the legality of her voyage.

"I replied that this was exactly what gave such unpleasant impressions to us in America. The Oreto, by the very paper furnished from the custom-house, was shown to be laden with one hundred and seventy tons of arms, and to have persons called troops on board, destined for Palermo *and* Jamaica. The very statement of the case was enough to show what was intended. The fact of her true destination was notorious all over Liverpool. No commercial people were blind to it, and the course taken by Her Majesty's officers in declaring ignorance only led to an inference most unfavorable to all idea of their neutrality in the struggle."

The Oreto went to Nassau, and was there seized.

SEIZURE AND RELEASE AT NASSAU.

What took place at Nassau we learn from the opinion of Judge John Campbell Lees in the Vice-Admiralty Court of the Bahamas, delivered 2d August, 1862. I quote from the decree:

Report of the Oreto, vol. 5, app. 18, p. 509.

"The British Steamship Oreto has been seized by the Commander of Her Majesty's Ship Greyhound on the alleged ground, as appears by the libel, that James Alexander Duguid, now or lately master of the said ship, and others exercising authority over her, have, without leave of Her Majesty the Queen, and within the jurisdiction of the Bahamas, attempted to equip, furnish, and fit out the said Steamship Oreto, with intent that she should be employed in the service of certain persons exercising or assuming to exercise the powers of Government in certain States claiming to be designated and known as the Confederate States of America, to cruise and commit hostilities against the citizens of the United States of America, Her Majesty the Queen being at the time at peace with the said United States, and have thereby acted in violation of the act 59 Geo. 3, c. 69, commonly known as the foreign enlistment act."

In the decree the judge reviews the testimony of the several witnesses. I quote at length what he says of the testimony of Captain Hickley, of the Greyhound:

Vol. 5, app. 18, p. 512 to 514.

"Captain Hickley, after stating certain motives which induced him to go on board the Oreto to examine her, gives the following evidence: 'At noon on the 10th of June, I went on board the Oreto with some officers and men, for the purpose of thoroughly examining her, and I found her discharging what I supposed to be shell, at the time of going on board. I should have followed out my intention of thoroughly searching the vessel; but as she was clearing at the time, and the consignee assured me that she had cleared in ballast for the Havana, and as I actually thought this was the case, this testimony being strengthened by that of the revenue officer, I thought further interference on my part unnecessary, and so I quitted the ship.' After some few details to which I do not think it necessary to advert, he goes on to say, 'I quited the ship with the understanding that I was again to visit her previous to her leaving; some days elapsed, and being convinced in my own mind that the vessel was not acting in good faith, I determined before leaving to make a thorough overhaul; accordingly on the 13th day of June I proceeded on board with the officers and men chosen, on its being reported to me that the vessel had cleared in ballast by the consignee. On my first going over her side the captain informed me that the crew had refused to get the anchor up unless they got a guarantee from myself or the governer, as to where she was going; and on the captain calling the crew aft, and requesting them to state their grievances to me, the men did so, in what I consider an orderly and proper manner, and in no mutinous spirit whatever, as far as I am capable of judging. *I then proceeded to examine the vessel, and found her in every respect fitted as a war vessel, precisely the same as vessels of a similar class in Her Majesty's navy.* She has a magazine and light-rooms forward, handing room, and handing scuttle for powder as in war vessels, shell rooms all fitted as in men-of-war, a regular lower deck with hammock hooks, mess shelves, &c., &c., as in our own war vessels; her cabin accommodations and fittings generally being those as fitted in vessels of her own class in the navy. After making this thorough investigation, I quitted the vessel to make my report to his Excellency the Governor and the law officer of the Crown.

"On Sunday the 15th, the boatswain and a portion of the crew of the Oreto having made reports to me that I thought made it incumbent on me as a public officer to act promptly on, I forthwith seized the Oreto, concluding that His Excellency was in church at the time, and made him acquainted with it as soon after church as possible. I received a protest that afternoon, and a letter the following day, against, and calling for an explanation of, my proceedings on behalf of the Captain, on the seizure of Sunday. A correspondence took place between myself, His Excellency, and the Law Officer of the Crown, which ended in my releasing the Oreto on Tuesday, the 17th; and on the vessel being released on this occasion, on further conversation and correspondence with the Governor, it was deemed necessary finally to retain the vessel for adjudication in the Vice Admiralty Court. *I found guns on board of her;* she is a vessel capable of carrying guns; she could carry four broadside guns forward, four aft, and two pivot guns amidships. Her ports are fitted to ship and unship, port bars cut through on the upper part to unship also; the construction of her ports I consider is peculiar to vessels of war: I saw shot boxes all around her upper deck calculated to receive Armstrong shot, or shot similar; she had breeching bolts and shackles and side-tackle bolts.

"*Magazine, shell-rooms, and light-rooms are entirely at variance with the fittings of merchant ships. She had no accommodation whatever for the stowage of cargo, only stowage for provisions and stores.*

"*She was in all respects fitted as a vessel of war of her class in Her Majesty's navy.*"

"In the cross-examination Captain Hickley says the opinions of the Governor and the law officer of the Crown were to the effect that the vessel was *not* (*sic.*) liable to seizure; this was *after* (*sic.*) my report of the 13th, after I had made my first examination, with the exception of clearing the holds. "The reason I considered she was acting in bad faith was because she did not sail on the 13th. When I go on board of her the first thing I am made acquainted with is the crew refusing to get the anchor up, because they do not know where the ship was going, although she cleared in ballast for the Havana, and the crew could not get anybody to satisfy them on the point as to where the ship was going." Captain Hickley then proceeds to state his opinion on various points, such as the right to build vessels adapted as vessels of war without Her Majesty's leave, the right of seamen to refuse going on any voyage which may prove ruinous to them, and he mentions various circumstances which caused him to inspect the Oreto. He says: "*It is impossible for a vessel to fight without guns, arms or ammunition on board, but the Oreto, as she now stands, could, in my professional opinion, that is to say, with her crew, guns, arms and ammunition going out with another vessel alongside of her, be equipped in twenty-four hours for battle.*" Captain Hickley makes some statements respecting a man named Jones, but as this man has gone away, and has given no evidence in the case, I think it unnecessary to take further notice of him. Alluding, however, to the information given to him by Jones, Captain Hickley says: "On this public report I seized the vessel again, and Mr. Cardale, the second lieutenant of the Greyhound, was put in charge of her." *Captain Hickley's evidence as to the constructions and fittings of the vessel I should consider conclusive, even had there been no other; but that construction and those fittings were made, not here, but in England, and of whatever nature they may be, do not subject the vessel to forfeiture here.* Captain Hickley, it appears, on certain grounds which he states, seized the Oreto, but acting on the opinion of the law officer of the Crown, and that of the Governor, he subsequently released her. Between this time and that of her ultimate seizure there is no evidence whatever that she did anything in violation of the Foreign Enlistment Act, but Captain Hickley's suspicions were aroused by the vessel not sailing for two or three days after that on which the consignee informed him she would. He, therefore, again went on board the

Oreto, and found that the reason of her not going was because the crew had refused to get her under way on account of their not being satisfied as to what port she was bound to. I must confess I look upon this as exonerating Captain Duguid and others concerned from suspicion of *mala fides* for not having gone at the time specified by Mr. Harris, but Captain Hickley took a different view of it, and he thereupon seized the vessel again. Now, if he did this, as seems implied in part of his evidence, on account of the crew not being able to obtain satisfactory information as to the destination of the vessel, I can only remark that he did it on ground which is not within the purview of the statute under which she is libelled; but if Captain Hickley thought proper, upon a reconsideration of the whole case, to seize her again, he had a right to do so.

" *Lieutenant Cardale gives nearly the same evidence as Captain Hickley did respecting the construction and fitting of the Oreto, proving that she is in every way adapted to be used as a vessel of war. He gives his opinion that the vessel could be fitted with her guns in twenty-four hours, supposing great exertions were made with plenty of hands, and that every thing was sent on board ready fitted for use—that is the gun-carriage slides, train-tackles, side-tackles, and all the equipments of the guns.*

" *With reference to what Captain Hickley as well as Lieutenant Cardale say respecting the probability of fitting the vessel with guns, amunition, &c., in a certain time, I have to observe that this evidence may be perfectly correct, but that I have no right whatever to take it into consideration, the case depends upon what has been done since the vessel came within this jurisdiction, and can in no way be affected by what it is possible might be done at some future period.*

" *Mr. Stuart the master and pilot of Her Majesty's ship, Greyhound, corroborates the evidence of the Oreto being built and fitted as a vessel of war.*

" *With respect to acts that were done or circumstances which occurred on board the Oreto, before she came within the jurisdiction of the Bahamas, Vice-Admiralty Court, it is admitted and is clear that the court has no authority to adjudicate.* The only ground then, on which evidence of those facts or circumstances can be admitted at all is, that it may explain or elucidate acts which have taken place *since* (*sic*) the arrival of the vessel in this port. The stropping of blocks that might be used as gun-tackle blocks or the taking of shells on board of a vessel built as a vessel of war, might afford ground for suspecting that such vessel was intended to be used as a vessel of war, when the same suspicion would not attach to a vessel not adapted for the purposes of war; and if there were evidence that a vessel was being armed for war purposes, the conversation of the parties so arming her, though occurring out of the jurisdiction of the court, might be evidence to point out for what purpose she was being armed. I proceed now to the evidence of what took place *after* (*sic*) the arrival of the Oreto in the Bahamas."

The judge having thus decided that he would not hold the Oreto though she had violated the neutrality laws in Liverpool, and would have been liable to seizure there; and further, that he would not hold her to prevent her from becoming, in twenty-four hours, a fully equipped vessel of war; he proceeded to consider what had been done since she arrived in Nassau. There was abundant evidence that, since her arrival there, she had received shells on board, and that a large lot of blocks had been stropped for gun tackle blocks; that the vessel had had a Confederate flag on board; and that Lowe, a Confederate agent, was on board directing the officers and crew of the vessel.

The Judge reviews the testimony at length. This review is most partial and would be ridiculous, if the conclusions arrived at by the Judge were not of such serious import to the United States and Great Britain. In conclusion he says:

Vol. 5. ap. 18, pp. 520, 521.

"The question now to be decided is, whether upon a careful consideration of the evidence there appears proof or circumstantial evidence amounting to reasonable proof, that a violation of the provisions of the Foreign Enlistment Act has been committed by the parties having charge of the Oreto; 1st, by attempting, by any act done since she came into this colony, to fit or equip the Oreto as a vessel of war; 2d, by making such attempt for the purpose of fitting and equipping her as a vessel of war for the service of the Confederate States of America, to cruise and commit hostilities against the citizens of the United States of America. I have already said that what took place *before* (*sic*) the vessel came here, can only be received as elucidatory or explanatory of what occurred *since* (*sic.*) that time. Two facts have been proved, both of which, it has been contended, are violations of the act. One is, that while the vessel lay at Cochrane's anchorage, some blocks were stropped in such a manner that they might be used as gun tackle blocks, and that they were so called in an entry in the ship's log-book, and by some of the crew. The other, that a number of boxes containing shells were put in the ship, after she came into this harbor, and were taken out again.

"I first notice the evidence relating to the shells.

"A permission from the Governor in council to ship cargo in the Oreto has been given in evidence; this does not prohibit any kind of cargo; shells might, therefore, be shipped under it as well as any other kind of cargo. It appears, by the evidence of Mr. Harris, one of the consignees of the vessel, that everything relating to the shipment of the shells was done openly and *bona fide*. It was observed by the Advocate General, that penal statutes need not now be constructed so strictly as they formerly were. Supposing that to be the case, there is no doubt that it is necessary to act on them with great caution. Now, what is the proof that these shells were intended for the arming of the vessel? Why is it not as probable they were intended to be carried as many similar cargoes have been, and landed at some other point? Mr. Harris, who shipped them, swears they were intended as cargo. Captain Duguid does the same, and so does Mr. Duggan the chief mate. What proof is there, either direct or circumstantial, that these gentlemen have sworn to what is false? It will be remembered that these shells were taken out of the Oreto, and landed *before* (*sic.*) the vessel was seized. The original intention, therefore, with regard to the shells, whatever it may have been, had been abandoned before the seizure was made. Is, then, the mere probability that such original intention was to arm and equip the vessel for war purposes sufficient for imputing the crime of perjury to Mr. Harris, to Captain Duguid, and to Mr. Duggan and for the condemnation of the vessel for a violation of the Foreign Enlistment Act? I certainly think not.

"The stropping of the blocks now alone remains to be considered.

"While the vessel lay at Cochrane's Anchorage strops were put on some blocks which had been brought in her from England. The blocks so stropped might be used as gun-tackle blocks, but blocks so stropped may also be used for the ordinary purposes of a merchant ship. What proof is there, then, that they were to be used as gun-tackle? First, it is contended, because they were named gun-tackle blocks in an entry in the ship's log-book, and were so called by some of the crew; second, because there were more of them than could be required for the ordinary use of the ship as luff-tackle, or watch-tackle, and then, it is argued, if the blocks were intended as gun-tackle blocks, the Oreto having been constructed as a war vessel, it is to be inferred that they were intended for her equipment.

"The other side in reply contend, first, that as the tackle might be used for either of the purposes before mentioned, the mere circumstance of the mate, in his entry in the log-book, or some of the crew, not knowing for what they were really intended, choosing to call them gun-tackle blocks, is no proof whatever that the owners of the vessel intended to use them as such; second, that the evidence of Captains Parke, Raisbeck, Waters and Eustice, all master mariners and men of much experience, has proved that the number of blocks on board the Oreto is not at all greater than would be required for the ordinary purposes of the ship, especially as she is a new vessel, on board of which a greater number of spare blocks is usually provided than is to be found in vessels that have been in use. That Captain Duguid unequivocally states in his evidence that the blocks were solely for the ordinary use of the vessel, and were never intended to be used as gun-tackle blocks. That he never ordered them to be stropped as such, or heard them called so until he heard the evidence given in this Court.

"Comparing, then, the evidence on the one side with that on the other, I agree in the opinion that the mere fact of blocks which might be used for other purposes being *called* (*sic*) gun-tackle blocks by persons who did not know for what purpose they were intended, is not proof that they were intended to be used as gun-tackle blocks. I think that as the fact of their being more blocks on board the Oreto than were required for her use, is a matter of professional opinion; and as the opinion of several master mariners quite competent to form a correct one, has been given in the evidence, that there were *not* (*sic.*) more blocks on board the vessel than might have been required for ordinary use, I ought not, in the absence of any valid and produceable reason for so doing, to adopt the opinion of one party in preference to that of the other. The consequence of which is, that the fact of there being more blocks than could be required for the ordinary use of the vessel is not sufficiently proved.

"Lastly, I see no evidence to invalidate the direct and positive testimony of Captain Duguid, that the blocks were *not* (*sic.*) intended to be used as gun-tackle blocks.

"*If there is not enough proof that the blocks in question were intended to be used as gun-tackle blocks, any observation as to the probability arising from the construction of the ship that they were for her equipment becomes unnecessary.*

"If the evidence given to prove that any act has been done here subjecting the vessel to the penalties of the foreign enlistment act is not sufficient for that purpose, it is, perhaps, superfluous to say anything about the capacity of the vessel to take cargo, or her connection with the Southern States of America. I will, however, observe that although the ship may not be calculated to carry the ordinary bulky cargo of merchant ships, yet there are certain kinds of cargo of which she might carry a considerable quantity. For example, there were some hundreds of boxes of shells put on board of her, and these were stowed in a compartment called the shell room. There yet remained what is called the magazine, the light rooms, and other places, besides the cabin. Into these a very large number of muskets, sabres, pistols, and other warlike instruments and ammunition might be stowed. And it is not improbable a fast vessel of this description might be used for what is called "running the blockade" an employment which, however, improper in itself, would not subject the vessel to forfeiture here.

"I think, too, that the evidence connecting the Oreto, with the

Confederate States of America, as a vessel to be used in their service to cruise against the United States of America, is but slight. It rests entirely on her connection with a gentleman named Lowe, who came out passenger in her, and some evidence has been given, from which it may be *inferred* (*sic.*) that this Mr. Lowe is connected in some way with the Southern States. He is said by some of the crew to have exercised some control over the Oreto. This is denied, on oath, by Mr. Harris and Captain Duguid. But, assuming it to be true, and assuming also that Mr. Lowe is connected with the Confederate States, no one can state that Mr. Lowe, or his employers, if he have any, may not have engaged the Oreto for the purpose of carrying munitions of war, which we have seen she is capable of doing, and this would not have been an infringement of the act under which she is libelled. But the evidence connecting the Oreto with the Confederate States rests almost entirely on the evidence of the steward, Ward, whose testimony I have already explained my reasons for receiving with much doubt.

"Under all the circumstances of the case, I do not feel that I should be justified in condemning the Oreto. She will, therefore, be restored.

"With respect to costs, although I am of opinion that there is not sufficient evidence of illegal conduct to condemn the vessel, yet, I think all the circumstances of the case taken together were sufficient to justify strong suspicion that an attempt was being made to infringe that neutrality so wisely determined upon by Her Majesty's Government. It is the duty of the officers of Her Majesty's Navy to prevent, as far as may be in their power, any such infringement of the neutrality. I think that Captain Hickley had *prima facie* (*sic.*) grounds for seizing the Oreto, and I therefore decree that each party pay his own costs."

Consequently the Oreto was released. I forbear here to comment on this opinion; no one can read it and doubt but that the Judge knew that the Oreto had been built, fitted, and partially armed at Liverpool, and was intended for the use of the Confederates.

Just to show, at this point, what the Oreto really was, and what she was intended for, I quote from the following letter:

Mallory to North, 12 July, 1862, v. 2, p. 614.

"Confederate States of America,
"*Navy Department, Richmond, July* 12, 1862.

"Sir: Your letter of the 29th of March last, reached me this morning.

"The department notified you, on the 11th January last, that you would receive orders to command the second vessel then being built in England, but for reasons satisfactory to the department you were subsequently assigned to the command of the first vessel, the Florida, (Oreto,) now at Nassau; and any just grounds for 'the surprise and astonishment' in this respect at the department's action is not perceived.

"A commission as commander for the war was sent you on the 5th of May, and your failure to follow the Oreto, which left England about the 21st March, and to take command of her as was contemplated, and as you were apprised by Captain Bullock, on the 26th of March, is not understood, and has been productive of some embarrassment.

"I am, respectfully, your obedient servant,
"S. R. MALLORY,
"*Secretary of the Navy.*"

"Commander James H. North,
"*C. S. N., London, England.*"

I will not here stop to discuss whether or no Judge Lees was right in deciding that he had no right to hold the Oreto, for any violation of the Foreign Enlistment Act, which had taken place in her building, equipping, or arming at Liverpool, further than to quote from the correspondence to show that Earl Russell contemplated sending to Nassau, for use on the trial, evidence of what had taken place on board the Oreto at Liverpool, and would have sent such evidence as was given at Nassau by Captain Hickley, of Her Majesty's ship Greyhound, provided he could have obtained it; and further, to show that orders were sent to seize the Alabama at Nassau, for violation of the Foreign Enlistment Act at Liverpool, on evidence no more conclusive than was given at the trial of the Oreto.

On 26th June, Mr. Seward writes to Mr. Adams, as follows:

Seward to Adams, 26 June, 1862, vol 2, p 607.

"Recently, however, a gunboat called the Oreto, built in England for the service of the insurgents, with ports and bolts for twenty guns, and other equipments to correspond, arrived at Nassau. The facts in regard to her having come to the knowledge of the United States consul, he made a protest upon the subject, and she was seized by the authorities. She was, however, released immediately after the arrival at Nassau, on the 8th instant, of Captain Semmes, late commander of the pirate Sumter, and the consul informed this Department that she was about to start on a privateering cruise. * *

"The release by the authorities at Nassau, of the Oreto, under the circumstances mentioned, seems to be particularly at variance with Her Britannic Majesty's Proclamation of neutrality, and I am commanded by the President to protest against it, and to ask the consideration of Her Majesty's Government upon the proceeding as one calculated to alarm the government and people of the United States."

Mr. Adams saw Lord Russell on the matter, and writes to Mr. Seward on 1st August, 1862:

Adams to Seward, 1 Aug., 1862, v. 2, p. 608.

"In this connection I begged to ask if he had any information respecting the proceedings had at Nassau in the case of the Oreto. I had seen a statement in the newspapers, additional, to the information contained in the dispatch No. 281, which I had read to him, to the effect that the Oreto had been actually stopped and put under the guns of Her Majesty's ship the Greyhound. I hoped this was true, for I thought the effect of such a proceeding would be very favorably viewed in America. His Lordship replied that he had received no information on the subject, beyond what I had referred to, which came from the American newspapers."

Meanwhile after the escape of the Oreto, the 290, the Alabama, had escaped; and at this same interview with Earl Russell Mr. Adams spoke to him as to the fitting out and subsequent escape of that vessel. Writing of this interview, in the letter last quoted Mr. Adams says: [I quote this letter particularly, to show what action the English Government had determined on if the 290 had gone to Nassau.]

"His Lordship first took up the case of 290, and remarked that a delay in determining upon it had most unexpectedly been caused by the sudden developement of a malady of the Queen's Advocate, Sir John D. Harding, totally incapacitating him for the transaction of business. This had made it necessary to call in other parties, whose opinion had been at last given for the detention of the gunboat, but before the order got down to Liverpool the vessel was gone. He should, however, send directions to have her stopped if she went, as was probable, to Nassau."

Earl Russell writing to Mr. Adams on 29th August, 1862, says:

Russell to Adams, 29 Aug., 1862, vol 2, p 610.

"With reference to the case of the steamer Oreto, which you are probably aware has been seized at Nassau, and is to be tried before the Admiralty Court of the Bahamas for a breach of the Foreign Enlistment Act, I have the honor to enclose for your information copies of a report and its enclosures from the commissioners of customs with reference to a suggestion I had made to the Treasury, that a competent officer should be sent to Nassau, to give evidence as to what occurred at Liverpool in the case of that vessel."

The report enclosed I quote at length:

Report of the Collector at Liverpool, August 23, 1862.

[Vol. 2, p. 611.]

"HONORABLE SIRS: It will be seen from the annexed statement of Mr. Morgan, Surveyor, that he will be able to state the fact of the vessel being built by Messrs. Miller & Sons, and of the absence of all warlike stores on board when she left the docks, while the evidence of Mr. Lloyd, the examining officer, fully supports the statement of the pilot, Mr. Parry, which, from its importance, I have taken on oath, as it appears to me he would be the most fitting person to give evidence of the absence of all warlike stores on board the vessel when she left this country.

"I am satisfied that she took no such stores on board; and indeed it is stated, though I know not on what authority, that her armament was conveyed in another vessel to Nassau. The board will, therefore, perceive that the evidence to be obtained from this port will all go to prove that she left Liverpool altogether unarmed, and that while here she had in no way violated the law.

S. PRICE EDWARDS."

Judge Lees, in the Nassau Court, with the very evidence in his possession which Earl Russell sought to obtain in Liverpool, and of a similar nature to the evidence upon which Earl Russell had ordered the Alabama to be seized, if she went to Nassau, should have condemned the Oreto.

THE ORETO AS THE FLORIDA.

The Oreto had in fact been ordered by Captain Bullock, as agent for the Confederate Government, and Captain Maffit, the officer appointed to command her on the failure of North to follow her from Liverpool, was all this while at Nassau waiting the result of the trial.* One crew had refused to sail in her unless guaranteed against Federal cruisers; this was before the trial; after the trial a second crew was shipped, but these also refused to go, and she went to sea at last, with only 5 firemen and 14 deck hands. The sailors, then at Nassau, evidently understood the object with which she sailed, and were not blinded either by the opinion of Judge Lees, or the temptation offered by Captain Maffit. Having at last got the Oreto to sea, Captain Maffit proceeded to Green Key,* an island of the Bahama Group, due South of New Providence, (the island on which Nassau is situated.) *There he took guns and stores on board, from a schooner sent to meet him there by a Confederate agent at Nassau,* hoisted the Confederate flag and gave his steamer the name of the Florida.

---

* See Bernard's "Neutrality of Great Britain," p. 351.

He thence made his way to Cardenas, in Cuba, and afterwards to Havana, and on the 4th of September, ran into Mobile. The Florida escaped from Mobile on 16th January, and arrived at Nassau on 30th January, 1863.

v. 2, p. 617. I quote from the Liverpool *Journal of Commerce,* 27th February, 1863:

"The Florida arrived at Nassau on the 30th ultimo. The secession sympathizers were jubilant, while the Union men went about in a depressed mood. Captain Maffit went immediately to visit the Governor of the city. He was received very cordially and dined with His Excellency. The Florida presented a man-of-war-like appearance, her masts being well set, yards neatly squared, and the brass work well polished. The next morning the Florida's decks were alive with a gang of laborers from the town, who immediately set to work in making sundry alterations in her interior arrangements, while the lighters from shore brought on board provisions of all kinds, a chain cable, and rigging. The Confederate officers, in the meantime, were on shore, and succeeded in picking up ten or fifteen recruits, all seamen, and hailing from every country in the world. The officers stated openly that there was no Yankee vessel built yet which could come near, much less catch the Florida, for it was an easy matter to drive her seventeen miles an hour. They ridicule the idea that the Vanderbilt could be a match for her, and wish for a trial. They state that they would go down to the track of the homeward bound East India vessels. The Florida left Nassau on the evening of the 31st, fully supplied for a three months' cruise. She is reported to have made seven prizes off the coast of Cuba, and one on the Bahama Banks. All purchases by the Confederate officers were paid for in Southern money, which is taken at par everywhere in Nassau."

The Florida coaled at Nassau, and on the 24th February ran into Barbadoes, having in the meanwhile burnt the American ship Jacob Bell, with a valuable cargo of teas and silk, and also several other vessels.

Her Majesty's instructions for the Colonies were in part as follows:

Russell to
Lords Com.
of Adm'lty,
Jan. 31, '62,
v. 1, p. 627.

"No ship-of-war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters, subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions, and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and *no coal shall be again supplied to any such ship-of-war or privateer, in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her, within British waters as aforesaid.*"

At Nassau the Florida obtained a full supply of coal, 160 tons. I quote the letter of Mr. Whiting, United States Consul, to Mr. Welles, Secretary to the Navy, dated 26th January, 1863, as follows:

Whiting to
Welles, 26
Jan., 1863,
vol. 2, p 616.

"I have the honor to inform you of the arrival at this port, this morning, of the Confederate steamer Florida, late the noted Oreto, Maffit, late of the United States Navy, commander.

"This pirate ship entered this port without any restrictions, with the secession flag *at her peak* (*sic.*) and the secession war pennant *at the main*, (*sic.*) and anchored abreast of Her Britannic Majesty's steamer Barracouta, Maffit and his officers landing in the *garrison boat*, (*sic.*) escorted by the post adjutant, Williams, of the 2d W. I. regiment. * * *

"The privateer, soon after anchoring, commenced coaling, by permission of the authorities—an evidence of the perfect neutrality which exists here, where the United States steamer Dacotah, but a few months since, was only permitted to take on board twenty tons of coal from an American bark off Hog Island; and only, then, on Captain McHinstry and myself pledging ourselves, in *writing*, (*sic.*) that within ten days after leaving this port she would not be cruising *within five miles* of *any island* (*sic.*) of the *Bahama Government*, (*sic.*)

On the arrival of the Florida at Barbadoes Mr. Trowbridge United States Consul, wrote to Governor Walker, as follows:

Trowbridge
to Walker,
24 Feb., '63,
vol. 2, p 621.

"May it please your Excellency, I respectfully beg leave to call your attention to the fact of the privateer Florida's arrival at this port, this morning, under the so-called Confederate flag—a flag that is not recognized by Her Majesty's Government, or any other nation—for the purpose, ostensibly, of obtaining coal and provisions. It is well known that she has, within the past two months, captured and burnt several United States merchant vessels, on the high seas, which were engaged in lawful trade.

"There are now several United States merchant vessels in this port, one of them desirous of leaving this evening.

"I trust that in view of these circumstances, and taking into consideration the pacific and friendly relations at present existing between Her Majesty's Government and the United States, your Excellency will be pleased to prevent this vessel from obtaining coals here, or any other supplies that will aid her in carrying on her illegal pursuits.

"I trust that your Excellency will be pleased to order that this vessel shall depart from this port at once.

"As representative for the United States of America, I feel it my duty, and do hereby protest, in the name of the United States, against this privateer vessel being permitted to obtain coal, or any supplies, contraband of war."

Correspondence, vol. 2, p. 619–652.

It was known to the Governor that the Florida had been fully coaled at Nassau within thirty days, nevertheless, contrary to the instructions above quoted, and against the remonstrances of the United States Consul, she was allowed by him to take another full supply at Barbadoes.

I have previously, on the authority of Mr. Bernard, stated that the Florida was armed at Green Key. I now quote from the verified statement of three Englishmen who helped to arm her.

On the 4th day of September, 1862, Peter Crawley, James Lockyer, and Andrew A. Hagan, each alleged, affirmed, declared and said, before T. William Henry Dillet, Notary Public:

Affidavit of Crawley, Lockyer & Hagan, vol. 2, p. 663.

"That on the Saturday night in the month of August just past, and at midnight they were proceeding to their lodgings, when they met a mob of men, in Bay Street, in the city of Nassau, opposite to the Matanzas Hotel; that they knew some of the men, who stopped them, then laid hold of them and said "come on;" that they asked where they were going, and they replied, on board the Oreto, to work all the night, and until eight o'clock the next day; that they were going to discharge a schooner's cargo into the Oreto, and were to get five dollars each for it; 'that they went on board the Steamship Oreto with her Quartermaster, named Pearson, but previous to their going on board, they asked for an explanation, and Pearson told them they were to work all night in discharging a schooner's cargo into the Oreto, and be paid at 8 o'clock the next day; that when they went on board the Oreto she was then lying outside of Hog Island, astern of Her Majesty's Steam Corvette Petrel, and attached to her by a hawser; that the Oreto got under way about an hour after they went on board, and then went to sea, and after they had been out about three hours, the Oreto overtook the British Schooner, Prince Alfred, of and belonging to the port of Nassau, New Providence, which vessel came by us, and Captain Maffit, of the Oreto, hailed her—he asked, 'what schooner is that?' and the reply was, 'the Prince Alfred.' Captain Maffit then asked the Captain of the Prince Alfred if he wanted a tow, and he said 'yes.' Captain Maffit told him to take in all sail as he could tow him better. The Captain complied. A hawser was sent on board from the Oreto and made fast to the Prince Alfred, which vessel was then towed astern to Green Cay, one of the said Bahama Islands.

"That on the next morning they began to discharge the Prince Alfred's cargo into the Oreto; that they took out of the Prince Alfred eight cannon, viz: six 32 pounders, broadside guns, and two 68 pounder pivot guns; that they also discharged shot and shell in cases, and ammunition in kegs, all of which were put on board the Oreto; that the cargo of the Prince Alfred was more than could be stowed in the Oreto, and that some barrels of bread, cases of shot and shell were left on her; that they remained so employed in discharging and stowing cargo at Green Cay aforesaid for six days, and that before the Oreto left that place she had all the guns before mentioned mounted on her deck.

"On Sunday morning, a week after they had been employed, they were called aft, and Captain Maffit and his first Lieutenant came and they were paid three pounds each for the work they had done, and Captain Maffit told them they would also receive two dollars a day each to it when they reached Nassau, which sum has not been paid to them by any person or persons; that after they left the Oreto they went on board the Prince Alfred; that the Oreto then hoisted anchor and got under way, and when about one or two hundred yards from them, hoisted the flag, known as the flag of the Confederate States of America; that her crew manned the rigging and gave three cheers, and she sailed out of sight."

The Florida left Liverpool more than thirty days, after Mr. Adams had written to Earl Russell that he had no doubt, but, that she was intended for the Confederates, and had at the same time offered to procure "further evidence in a more formal way." When she left Liverpool she was built and equipped as a vessel of war, and partially armed as such. When she arrived at Nassau, she was seized, and the evidence was clear, that she had violated the Foreign Enlistment Act both at Liverpool and at Nassau, but yet she was released. When she had been released, she sailed from Nassau towing a schooner loaded with her armament; and confirmed the testimony of Captain Hickley, by becoming a fully armed vessel in twenty-four hours, and that, too, under the shelter of one of Her Majesty's Islands.

She then hoisted the Confederate flag, which the judge had pretended never to have been on board, and was off to capture and to burn.

She continued as a pirate until her seizure, in the harbor of Bahia, by the United States steamer Wachusetts in October, 1864. She had meanwhile destroyed thirty-two vessels belonging to citizens of the United States, and bonded four others. Claims for over three millions of dollars have been filed with the Secretary of State on account of vessels and cargoes destroyed by the Florida.

THE ALABAMA.

On 15th May, 1862, the Alabama, then known as "The 290," was launched from the yards of Messrs. Laird & Co., Birkenhead, Liverpool.

On 16th May, 1862, Mr. Dudley, United States Consul, writing to Mr. Seward of this vessel, said:

Dudley to Seward, 16 May, 1862, vol. 3, p. 1.

> "There is no doubt but what she is intended for the rebels. This was admitted by one of the leading workmen in the yard; he said she was to be the sister to the Oreto, (Florida,) and for the same purpose and service."

On 13th June, 1862, Mr. Dudley wrote Mr. Seward particularly describing the Alabama. He said:

Dudley to Seward, 18 June, 1862, vol. 3, p. 1.

> "The gunboat built for the Confederates by Messrs. Lairds will soon be completed. She made a trial trip last Thursday. None of the press were invited. No one was admitted on board without a ticket. They were issued only to the persons actively engaged in aiding the rebellion."

On 21st June, 1862, Mr. Dudley wrote to Mr. Adams as follows:—

Dudley to Adams, 21 June, 1862, vol. 3, p. 5.

> "Sir,—The gunboat now being built by the Messrs. Laird & Co., at Birkenhead, opposite Liverpool, and which I mentioned to you in a previous dispatch, is intended for the so-called Confederate Government in the Southern States. The evidence I have is entirely conclusive to my mind. I do not think there is the least room for doubt about it. Beauforth and Cady, two of the officers from the privateer Sumter, stated that this vessel was being built for the Confederate States. The foreman in Messrs. Lairds' yard says she is the sister to the gunboat Oreto, and has been built for the same parties and for the same purpose; when pressed for a further explanation, he stated that she was to be a privateer for the Southern Government in the United States. The captain and officers of the steamer Julia Usher now at Liverpool, and which is loaded to run the blockade, state that this gunboat is for the Confederates, and is to be commanded by Captain Bullock.
>
> "The strictest watch is kept over this vessel; no person except

those immediately engaged upon her is admitted into the yard. On the occasion of the trial trip made last Thursday week no one was admitted without a pass, and these passes were issued to but few persons, and those who are known here as active secessionists engaged in sending aid and relief to the rebels.

"I understand that her armament is to consist of eleven guns, and that she is to enter at once, as soon as she leaves this port, upon her business as a privateer.

"This vessel is very nearly completed; she has had her first trial trip. This trial was successful, and entirely satisfactory to the persons who are superintending her construction. She will be finished in nine or ten days. A part of her powder canisters, which are to number two hundred, and which are of a new patent, made of copper with screw tops, are on board the vessel; the others are to be delivered in a few days. * * *

"The platforms and gun-carriages are now being constructed.

"When completed and armed she will be a most formidable and dangerous craft, and if not prevented from going to sea will do much mischief to our commerce. The persons engaged in her construction say that no better vessel of her class was ever built."

Adams to Russell, 23 June, 1862, v. 3, p. 5.

On 23d June, 1862, wrote to Earl Russell enclosing the letter of Mr. Dudley last quoted. After alluding to the equipment and escape of the gunboat Oreto, (Florida) he says:

"I am now under the painful necessity of apprising your Lordship, that a new and still more powerful war steamer is nearly ready for departure from the port of Liverpool on the same errand. This vessel has been built and launched from the dockyard of persons, one of whom is now sitting as a member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea. It is about to be commanded by one of the insurgent agents, the same who sailed in the Oreto. The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents in the United States, the nature and extent of whose labors are well explained in the copy of an intercepted letter of one of them, which I received from my government some days ago, and which I had the honor to place in your Lordship's hand on Thursday last.

"I now ask permission to transmit for your consideration, a letter addressed to me by the United States Consul at Liverpool, in confirmation of the statements here submitted, and to solicit such action as may tend either to stop the projected expedition, or to establish the fact that its purpose is not inimical to the people of the United States."

Russell to Adams, 25 June, 1862, v. 3, p. 6.

On 25th June, 1862, Earl Russell acknowledges the receipt of Mr. Adams letter and says:"

"I have to acquaint you that I have lost no time in referring the matter to the proper department of Her Majesty's government."

Adams to Seward, 26 June, 1862, vol. 3, p. 2.

On 26th June, 1862, Mr. Adams writes to Mr. Seward, stating what he had done in the matter of the Alabama, and adds:

"The uniform ill success which has attended all my preceding remonstrances, especially in the very parallel case of the gunboat Oreto, makes me entertain little hope of a more favorable result now. But the record would hardly seem to be complete without inserting it."

Report Com of Cust. 1 July 1862 v. 3, p. 7.

On 1st July, 1862, the Commissioners of Customs, to whom had been referred Mr. Adams' letter to Earl Russell and its enclosure, reported to the Lords Commissioners of the Treasury:

See also Surveyor's Report of 28 June, 1862 on which the Com'rs rept. was based.

"We are informed that the officers have at all times free access to the building yards of the Messrs. Laird, at Birkenhead, where the vessel is lying, and that there has been no attempt on the part of her builders to disguise, what is most apparent, that she is intended for a ship of war.

* * * * *

"The surveyor has further stated that she has several powder canisters on board, but as yet neither guns nor carriages, and that the current report in regard to the vessel is, that she has been built by a foreign government, which is not denied by the Messrs. Laird, with whom the surveyor has conferred; but they do not appear disposed to reply to any questions respecting the destination of the vessel after she leaves Liverpool, and the officers have no other reilable source of information on that point; and, having referred the matter to our solicitor, he has reported his opinion that at present there is not sufficient ground to warrant the detention of the vessel or any interference on the part of this department, in which report we beg to express our concurrence. And with reference to the statement of the United States consul that the evidence he has in regard to this vessel being intended for the so-called Confederate Government in the Southern States is entirely conclusive to his mind, we would observe that inasmuch as the officers of customs of Liverpool would not be justified in taking any steps against the vessel unless sufficient evidence to warrant her detention should be laid before them, the proper course would be for the consul to submit such evidence as he possesses to the collector at that port, who would thereupon take such measures as the provisions of the Foreign Enlistment Act would require; without the production of full and sufficient evidence to justify their proceedings, the seizing officers might entail on themselves and on the Government very serious consequences."

On 4th July, 1862, Earl Russell wrote to Mr. Adams sending a copy of this report, and added:

Russell to Adams, 4 July, 1862, vol. 3, p. 6.

"I would beg leave to suggest that you should instruct the United States Consul at Liverpool, to submit to the collector of customs at that port, such evidence as he may possess tending to show that his suspicions as to the destination of the vessel in question are well founded."

Adams to Russell, 7 July, 1862, vol. 3, p. 17.

On 7th July, 1862, Mr. Adams acknowledges the receipt of Earl Russell's last note, and said that he would instruct the Consul at Liverpool as suggested.

Adams to Welding, 7 July, 1862, vol. 3, p. 8.

On the same day Mr. Adams asked the Consul to furnish the evidence to the collector.

DUDLEY VS. "THE COLLECTOR EDWARDS."

On 9th July, 1862, Mr. Dudley wrote to Mr. Edwards, Collector of Customs, Liverpool, as follows:

Dudley to Edwards, 9 July, 1862, vol. 3, p. 17.

"Sir,—In accordance with a suggestion of Earl Russell, in a communication to Mr. Adams, the American Minister in London, I beg to lay before you the information and circumstances which have come to my knowledge relative to the gunboat being fitted out by Messrs. Laird, at Birkenhead, for the confederates of the Southern United States of America, and intended to be used as a privateer against the United States.

"On my arrival and taking charge of the Consulate at Liverpool, in November last, my attention was called by the acting Consul, and by other persons, to two gunboats being or to be fitted out for the so-called Confederate Government—the Oreto, fitted out by William C. Miller & Sons, and Messrs. Fawcett, Preston & Co., and the one now in question. Subsequent events fully proved the suspicion, with regard to the Oreto, to be well founded. She cleared from Liverpool in March last for Palermo and Jamaica, but sailed direct for Nassau, where she is now receiving her armament as a privateer for the so-called Confederate Government. And my attention was called repeatedly to the gunboat building by Mr. Laird, by various persons, who stated that she was also for a Confederate privateer, and was being built by Messrs. Laird for that express purpose. In May last two officers of the Southern privateer Sumter named Cady and Beaufort, passed through Liverpool on their way to Havana or Nassau; while here, stated that there was a gunboat building by Mr. Laird at Birkenhead, for the Southern Confederacy, and not long after that a foreman, employed about the vessel in Messrs. Lairds' yard, stated that she was the sister of the Oreto, and intended for the same service; and, when pressed for an explanation, further stated that she was to be a privateer for the Southern Government of the United States.

"When the vessel was first tried Mr. Wellsman, of the firm of Fraser, Trenholm & Co., (who are well known as agents for the Confederate Government,) Andrew and Thomas Byrne, and other persons, well known as having been for months actively engaged in sending munitions of war for said Government, were present, and have accompanied her on her various trials as they had accompanied the Oreto on her trial trip and on her departure. In April last the Southern Screw Steamer Annie Childs, which had run the blockade out of Charleston, and the name of which was changed at this port to the Julia Usher, was laden with munitions of war, consisting of a large quantity of powder, rifled cannon, &c., by Messrs. Fraser, Trenholm & Co., for the Southern Confederacy, and left Liverpool to run the blockade under the command of a Captain Hammer, and having on board several of the crew of the privateer Sumter, to which I have before referred. For some unknown reason this vessel came back, and is now here. Since her return a youth named Robinson, who had gone in her as a passenger, has stated that the gunboat building at Lairds' for the Southern Confederacy was a subject of frequent conversation among the officers while she (Julia Usher) was out, she was all the time spoken of as a Confederate vessel, and that Captain Bullock was to command her. That the money for her was advanced by Fraser, Trenholm & Co. That she was not to make any attempt to run the blockade, but would go at once as a privateer. That she was to mount eleven guns. That if the Julia Usher were not going, the six men from the Sumter, who were on board the Julia Usher, were to join the gunboat. This youth, being a native of New Orleans, was extremely anxious to get taken on board the gunboat, and wished the persons he made the communication to, to assist him, and to see Captain Bullock on his behalf. He has, I understand, been removed to a school in London. With reference to his statement, I may observe, that Captain Hammer referred to is a South Carolinian; has been many years in Fraser, Trenholm & Co's employ; is greatly trusted by them, and is also intimate with Captain Bullock, so that he would be likely to be well informed on the subject; as he had no notion at that time of returning to Liverpool, he would have no hesitation in speaking of the matter to his officers and the persons from the Sumter. I may also state, the Captain Bullock referred to is in Liverpool; that he is an officer of the Confederate navy; that he was sent over here for the express purpose of fitting out privateers and sending over munitions of war; that he transacts his business at the office of Fraser, Trenholm & Co; that he has been all the time in communication with Fawcett, Preston & Co., who fitted out the Oreto, and with Lairds', who are fitting out this vessel; that he goes almost daily on board the gunboat, and seems to be recognized as in authority.

"A Mr. Blair of Paradise street, in this town, who furnished the cabins of the Laird gunboat, has also stated that all the fittings and furniture were selected by Captain Bullock, and were subject to his approval, although paid for by Mr. Laird.

"The information on which I have formed an undoubted conviction that this vessel is being fitted out for the so-called Confederate Government, and is intended to cruise against the commerce of the United States, has come to me from a variety of sources, and I have detailed it to you as far as practicable.

"I have given you the names of the persons making the statements; but as the information, in most cases, is given to me by persons out of friendly feeling to the United States, and in strict confidence, I cannot state the names of my informants; but what I have stated is of such a character, that little inquiry will confirm its truth. Everything about the vessel shows her to be a war vessel; she has well constructed magazines; she has a number of canisters of a peculiar and expensive construction for containing powder; she has already platforms screwed to her decks for the reception of swivel-guns. Indeed, the fact that she is a war-vessel is not denied by the Messrs. Laird, but they say she is for the Spanish Government. This they stated on the 3d April last, when General Burgoyne visited their yard, and was shown over it and the vessels being built there by Messrs. John Laird, Jr., and Henry H. Laird, as was fully reported in the papers at the time. Seeing the statement, and having been already informed from so many respectable sources that she was for the so-called Confederate Government, I at once wrote to the Minister in London to ascertain from the Spanish Embassy whether the statement was true. The reply was a positive assurance that she was not for the Spanish Government. I am, therefore, authorized in saying that what was stated on that occasion, as well as statements since made, that she is for the Spanish Government, are untrue.

"I am satisfied, beyond a doubt, that she is for a confederate war-vessel.

"If you desire any personal explanation or information I shall be happy to attend you whenever you may request it.

"Very respectfully, I am your obedient servant,

"THOMAS H. DUDLEY, *Consul.*

"J. PRICE EDWARDS, ESQ.,
"*Collector of Customs, Liverpool.*"

On 10th July, 1862, Mr. Edwards writes to Mr. Dudley—

Edwards to Dudley, 10 July, 1862, vol. 3, p. 19.

"Sir,—I beg to acknowledge the receipt of your communication of yesterday's date, (received this morning,) and to acquaint you that I shall immediately submit the same for the consideration and direction of the board of customs, under whom I have the honor to serve. I may observe, however, that I am respectfully of opinion that the statement made by you is not such as could be acted upon by the officers of this revenue, unless legally substantiated by evidence."

The same day Mr. Edwards writes to the Commissioners of Customs:

Edwards to Commis'ers of Customs, 10 July, '62, vol 3, p 136.

"Honorable Sirs,—I have this morning received the inclosed communication from the American Consul, Mr. Dudley, which I respectfully submit for the consideration of the board. I annex the copy of my letter to the Consul, acknowledging his communication, and I beg a reference to the inclosed report of this day's date, from Mr. Morgan, the Surveyor, showing the state which the vessel is now in. If she is for the Confederate service, the builders and parties interested are not likely to commit themselves by any act which would subject them to the penal provisions of the Foreign Enlistment Act."

Just in this place it is well to note these two letters of the collector, Edwards. In the one to the Consul, he expresses the opinion that the information is not sufficient, but does not seek further the "personal explanation or information offered by the Consul."

In his letter to the Commissioners of Customs, he discourages all "further explanation or information of the Consul" by saying "if she is for the Confederate service the builders and parties interested are not likely to commit themselves by any act which would subject them to the penal provisions of the Foreign Enlistment Act," at the same time inclosing his letter to the Consul which had stated that the evidence already given was not sufficient.

On 11th July, 1862, Mr. Dudley writes to Mr. Adams, inclosing a copy of his letter to the Collector and the Collector's reply to him:

Dudley to Adams, 11 July, 1862, v. 3, p. 10.

"The collector seems disposed to hold our Government to as strict a rule as if we were in a court of justice. We are required to furnish legal evidence, (I take it this is his meaning, though it is involved in some obscurity) that is, that the onus is upon us to prove and establish by legal evidence that this vessel is intended as a privateer. If this is to be taken as the answer of the Government, it is hardly worth spending our time in making further application to them. They show that their neutrality is a mere pretense, and that the United States cannot expect anything like impartiality and fairness at their hands.

"When the United States Government, through its acknowledged representatives say to the British Government, that it is satisfied that a particular vessel, which is being built at a certain place in the kingdom by certain parties who are their own subjects, is intended as a privateer for the rebel government, it is the duty of that government to call up the parties who are fitting out the vessel, tell them what the charge is, and require them to state for whom and for what purpose she is being built, and if the charge is admitted or shown to be true, to stop her sailing. Our Government has a right, it seems to me, not only to expect but to require this much of another friendly Government. And if there was any disposition to do right and act honestly, this much at least would be accorded. I inclose a description of the inside of this vessel."

On 18th July, 1862, Mr. Dudley writes to Mr. Seward as follows:

Dudley to Seward 18 July, 1862, v. 3, p. 12.

"Our minister at London, in a letter dated yesterday, received this morning, directs me to employ a solicitor, and get up affidavits to lay before the collector, in compliance with act of parliament, 59 Geo. III, c. 69.

"I have retained Mr. Squarey, of Liverpool, a man of ability in his profession. He has taken hold of the case with energy, and I entertain some hopes that we shall succeed in preventing the gunboat from sailing. I have directed him to work up and prosecute the case without regard to expense. He is reputed to be a man of honor as well as ability. I hope my action in this matter will be approved by the department. The great difficulty we have is to get direct evidence. Mr. Squarey thinks we shall be able to procure enough to hold her.

"Since my communication No. 90, she has been in what is known as the great float at Birkenhead, and taken in about five hundred tons of coal. Her provisions are all on board."

Depositions v. 3, p. 21 to 26.

On 21st July, 1862, six affidavits were made before and submitted to the Collector of Customs at Liverpool [at the suggestion of Earl Russell in his letter of 4th July, 1862, to Mr. Adams, *ante, p.* 68] by the Attorney of the United States Consul, A. T. Squarey, Esq., who read the portion of the Foreign Enlistment Act applicable to the case to the collector and requested him to detain the vessel.

The collector replied that he would refer the matter to the Board of Customs at London.

Edwards to com'rs of customs, 21 July, 1862, vol. 3, p. 20.

On 21st July, 1862, Mr. Collector Edwards referred these six affidavits to the commissioners of customs, and said: "The only evidence of importance, as it appears to me, is that of William Passmore, who had engaged himself as a sailor to serve in the vessel."

I quote the entire deposition of William Passmore:

Affi't of Passmore, vol. 3, p. 25.

"I, William Passmore, of Birkenhead, in the county of Chester, mariner, make oath and say as follows:

"1. I am a seaman, and have served as such on board Her Majesty's ship Terrible during the Crimean war.

"2. Having been informed that hands were wanted for a fighting vessel built by Messrs. Laird & Co., of Birkenhead, I applied on Saturday, which was I believe, the 21st day of June last, to Captain Butcher, who, I was informed, was engaging men for the said vessel, for a berth on board her.

"3. Captain Butcher asked me if I knew where the vessel was going. In reply to which I told him I did not rightly understand about it. He then told me the vessel was going out to the Government of the Confederate States of America. I asked him if there would be any fighting; to which he replied yes; they are going to fight for the Southern government. I told him I had been used to fighting vessels, and showed him my papers. I asked him to make me a signal man on board the vessel, and, in reply, he said that no articles would be signed until the vessel got outside, but he would make me signal man if they required one when they got outside.

"4. The said Captain Butcher then engaged me as an able seaman on board the said vessel at the wages of £4 10s. per month; and it was arranged that I should join the ship in Messrs. Laird &

Co's yard on the following Monday. To enable me to get on board, Captain Butcher gave me a pass-word the number "290."

"5. On the following Monday, which was, I believe, the 23d day of June last, I joined the said vessel in Messrs. Laird & Co's yard at Birkenhead, and I remained by her until Saturday last.

"6. The said vessel is a screw steamer of about 1100 tons burden, as far as I can judge, and is built and fitted up as a fighting ship in all respects, she has a magazine, and shot and canister racks on deck, and is pierced for guns, the sockets for the bolts for which are laid down. The said vessel has a large quantity of stores and provisions on board, and is now lying at the Victoria wharf in the great float at Birkenhead, where she has taken in about three hundred tons of coal.

"7. There are now about thirty hands on board her, who have been engaged to go out in her. Most of them are men who have previously served on board fighting ships, and one of them is a man who served on board the Confederate steamer Sumter. It is well known by the hands on board that the vessel is going out as a privateer for the Confederate government, to act against the United States, under a commission from Mr. Jefferson Davis. Three of the crew are, I believe, engineers, and there are also some firemen on board.

"8. Captain Butcher and another gentleman have been on board the ship almost every day. It is reported on board the ship that Captain Butcher is to be the sailing master, and that the other gentleman, whose name I believe is Bullock, is to be the fighting captain.

"9. To the best of my information and belief, the above-mentioned vessel, which I have heard is to be called the Florida, is being equipped and fitted out in order that she may be employed in the service of the Confederate government in America, to cruise and commit hostilities against the government and people of the United States of America.

"WILLIAM PASSMORE.

"Sworn before me, at the custom-house, Liverpool, this 21st day of July, 1862.

"J. PRICE EDWARDS,
"*Collector.*"

On 22d July, 1862, the commissioners of customs wrote to Mr. Collector Edwards, saying:

Com'rs of Customs to Edwards, 22 July, 1862, vol. 3, p. 20.

"We acquaint you that we have communicated with our solicitor on the subject, who has advised us that the evidence submitted is not sufficient to justify any steps being taken against the vessel under either the 6th or 7th section of act 59, Geo. III, cap. 69, and you are to govern yourself accordingly.

"The solicitor has, however, stated that if there should be sufficient evidence to satisfy a court of enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, this department might detain the ship until these penalties are satisfied, or good bail given, but there is not sufficient evidence to require the customs to prosecute; it is, however, competent for the United States Consul, or any other person, to do so at their own risk, if they see fit."

On 23d July, 1862, Mr. Collector Edwards wrote to Mr. Squarey, saying:

Edwards to Squarey, 23 July,'62, v. 3, p. 21.

"I have it in command to acquaint you that the board have communicated with their solicitor on the subject, who has advised them that the evidence submitted is not sufficient to justify any steps being taken against the vessel under either the 6th or 7th section of the Act 59, Geo. III, cap. 69.

"It is, however, considered to be competent for the United States Consul to act at his own risk if he should think fit."

It is well to note here, that Mr. Edwards does not transmit to Mr. Squarey that part of the letter from the Commissioner of Customs, which stated in what way the Alabama might be detained, and as to which the affidavit of Passmore was conclusive.

On 22d July, 1862, Mr. Dudley wrote to Mr. Seward this account of what he had done:

Dudley to Seward, 22 July 1862, v. 3, p. 13.

"The difficulty we have had to contend with was to get direct proof. There were men enough who knew about her, and who understood her character, but they were not willing to testify, and in a preliminary proceeding like this it was impossible to obtain process to compel them. Indeed, no one in a hostile community like Liverpool, where the feeling and sentiment are against us, would be a willing witness, especially if he resided there, and was in any way dependent upon the people of that place for a livelihood. We have, however, succeeded in getting two of the men from the vessel, who were employed by Captain Butcher to go out in her. Their evidence is direct and positive that the vessel is a privateer, built as such for the Confederate Government, and is to go out of this port (Liverpool) to make war upon the Government of the United States. Captain Butcher, her captain, who is now in command of the vessel, told these men so, and employed them to go as part of the crew. They have been on vessel as part of the crew under this captain. This evidence, with some two or three other affidavits, was laid before the collector of the port yesterday (21st July) afternoon, and I think, notwithstanding his sympathy for the rebels, and his indisposition to do anything against them, it is too strong and conclusive for him to refuse our application. He gave us no answer; merely stated that he would submit it to the commissioners under whom he acts. I am now in London, having come up last night, accompanied by my solicitor, with copies of the affidavits for Mr. Adams to lay before the Foreign Office, and to confer with him as to further proceedings to arrest this vessel. By his direction we had a conference with Mr. Collier, a barrister of London this morning.

* * * *

"I think we shall stop her; that the case is so bald they will not dare to let her go."

MORE LEGAL EVIDENCE.

On 22nd July, 1862, the following affidavits were made by Edward Roberts and Robert John Taylor.

"*Deposition of Edward Roberts.*

Affidavits Roberts and Taylor, vol. 3, p. 26, 27.

"I, Edward Roberts, of No. 6 Vere street, Toxteth Park, in the county of Lancaster, ship carpenter, make oath and say, as follows:

"1. I am a ship carpenter, and have been at sea for about four years in that capacity.

"2. About the beginning of June last, I had been out of employ for about two months, and hearing that there was a vessel in Messrs. Laird & Co's yard fitting out to run the blockade, I applied to Mr. Barnett, shipping master, to get me shipped on board the said vessel.

"3. On Thursday, the 19th day of June last, I went to the said Mr. Barnett's office, No. 11, Hanover street, Liverpool, in the county of Lancaster, and was engaged for the said vessel as carpenter's mate. By the direction of the said Mr. Barnett, I met Captain Butcher the same day on the Georges landing stage, and followed him to Messrs. Laird & Co's ship-building yard, and on board a vessel lying there. The said Captain Butcher spoke to the boatswain about me, and I received my orders from the said boatswain. At dinner time, the same day, as I left the yard the gateman asked me if I was "going to work on that gunboat;" to which I replied "yes."

"4. The said vessel is now lying in the Birkenhead float, and is known by the name "No. 290." The said vessel has coal and stores on board. The said vessel is pierced for guns, I think four on a side, and a swivel gun. The said vessel is fitted with shot and canister racks, and has a magazine. There are about fifty men, all told, now on board the said vessel. It is generally understood on board of the said vessel that she is going to Nassau, for the Southern government.

"5. I know Captain Bullock by sight and have seen him on board of the said vessel five or six times; I have seen him go round the said vessel with Captain Butcher. I understood, both at Messrs. Laird & Co's yard and also on board the said vessel, that the said Captain Bullock was the owner of the said vessel.

"6. I have been working on board the said vessel from the 19th day of June last up to the present time, with wages at the rate of £6 per month, payable weekly. I have signed no articles or agreement. The talk on board is that an agreement will be signed before sailing.

"EDWARD ROBERTS.

"Sworn at Liverpool, in the county of Lancaster, this 22d day of July, 1862, before me,

"WM. BROWN,
"*Justice of the Peace for Lancashire and Liverpool.*"

"*Deposition of Robert John Taylor.*

"I, Robert John Taylor, of Mobile, but at present remaining temporarily at Liverpool, mariner, make oath and say, as follows:

"1. I am a native of London, and forty-one years of age. From fourteen years upwards I have followed the sea. During the last fifteen years I have been living in the Confederate States of America, principally at Savannah and Mobile, and since the secession movement I have been engaged in running the blockade. I have run the blockade six times, and been captured once.

"2. The vessels in which I have been engaged in running the blockade have sailed from Mobile, and have gone to Havana, and New Orleans. I am well acquainted with the whole of the coast of the Confederate States, as I have been principally engaged since 1847 in trading to and from the gulf ports.

"3. I came to England after my release from Fort Warren on the 29th of May last. I came here with the intention of going to the Southern States, as I could not get there from Boston.

"4. Mr. Rickarby, of Liverpool, a brother of the owner, at Mobile, of the vessel in which I was captured when attempting to run the blockade, gave me instructions to go to Captain Butcher, at Lairds' yard, Birkenhead. I had previously called on Mr. Rickarby, and told him that I wanted to go South, as the northerners had robbed me of my clothes when I was captured, and I wanted to have satisfaction.

"5. I first saw Captain Butcher at one of Mr. Laird's offices last Thursday fortnight (namely, the 3d of July last.) I told him that I had been sent by Mr. Rickarby, and asked him if he were the captain of the vessel which was lying in the dock. I told him that I was one of the men that had been captured in one of Mr. Rickarby's vessels, and that I wanted to get South in order to have retaliation of the northerners for robbing me of my clothes.

He said that if I went with him in his vessel, I should very shortly have that opportunity.

"6. Captain Butcher asked me at the interview if I was well acquainted with the Gulf Ports, and I told him I was. I asked him what port he was going to, and he replied that he could not tell me then, but that there would be an agreement made before we left for sea. I inquired as to the rate of wages, and I was to get four pounds ten shillings per month, payable weekly.

"7. I then inquired if I might consider myself engaged, and he replied, yes, and that I might go on board the next day, which I accordingly did; and I have been working on board up to last Saturday night.

"8. I was at the seige of Acre, in 1840, in her Majesty's frigate Pique, Captain Edward Boxer, and served on board for nine months. Captain Butcher's ship is pierced for eight boardside guns, and four swivels or long-toms. Her magazine is complete, and she is fitted up in all respects as a man-of-war, without her ammunition. She is now chock full of coals, and has, in addition to those in the hold, some thirty tons on deck.

"9. One day, whilst engaged in heaving up some of the machinery, we were singing a song, as seamen generally do, when the boatswain told us to stop that, as the ship was not a merchant ship, but a man-of-war.

"ROBERT JOHN TAYLOR.

"Sworn at Liverpool, in the County of Lancaster, this 22d day of July, 1862, before me.

"W. J. LAMPORT,
Justice of the Peace for Liverpool."

Opinion, v. 3, p. 29.

On 23d July, 1862, Mr. Collier, Barrister, gave this opinion founded on all the affidavits.

"Temple, July 23, 1862. I have perused the above affidavits and am of opinion that the Collector of Customs would be justified in detaining the vessel. Indeed, I should think it his duty to detain her, and that if, after the application which has been made to him, supported by the evidence which has laid before me, he allows the vessel to leave Liverpool, he will incur a heavy responsibility of which the Board of Customs, under whose direction he appears to be acting, must take their share.

"It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act, which, if not enforced on this occasion, is little better than a dead letter.

"It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance.

"R. P. COLLIER."

On 23d July, 1862, Mr. Squarey wrote to the Secretary of the Board of Customs as follows:

Squarey to Board of Customs, 23 July, 1862, vol. 3, p 29.

"Sir,—Referring to an application which I made on behalf of the United States Government, under the instructions of their Consul at Liverpool, to the Collector of Customs at Liverpool, on Monday last, for the detention, under the provisions of the Act 59, George III, Cap. 69, of a steam gunboat built by Messrs. Laird & Co., at Birkenhead, and which, there is no doubt, is intended for the Confederate States, to be used as a vessel of war against the United States Government, I beg now to inclose two affidavits which reached me this morning from Liverpool, one made by Robert John Taylor, and the other by Edward Roberts, and which furnish additional proof of the character of the vessel in question.

"I also inclose a case which has been submitted to Mr. Collier, Q. C., with his opinion thereon.

"I learned this morning from Mr. O'Dowd, that instructions were forwarded yesterday (22d July) to the Collector at Liverpool not to exercise the powers of the act in this instance, it being considered that the facts disclosed in the affidavits made before him were not sufficient to justify the Collector in seizing the vessel.

"On behalf of the Government of the United States, I now respectfully request that this matter, which I need not point out to you involves consequences of the greatest possible description, may be reconsidered by the Board of Customs, on the further evidence now adduced.

"The gunboat now lies in Birkenhead docks ready for sea in all respects, with a crew of fifty men on board. She may sail at any time, and I trust the urgency of the case will excuse the course I have adopted of sending these papers direct to the Board, instead of transmitting them through the Collector at Liverpool, and the request, which I now venture to make, that the matter may receive immediate attention.

"I have the honor to be, your obedient servant,

"A. F. SQUAREY."

Squarey to Adams, 25 July, 1862, vol. 3, p 30.

On 24th July, 1862, the Commissioners of Customs referred the matter to the Law Officers of the Crown.

On 25th July, 1862, Mr. Dudley writes to Mr. Seward, giving a further account of what happened:

Dudley to Seward, 25 July, 1862, v. 3. p. 14. "Sir,—I returned from London on Wednesday night, (23d July.) On Tuesday (22d July) we obtained the affidavits of two of the crew from the gunboat No. 290. Having learnt that the Collector had forwarded those we laid before him on Monday to the Board of Customs in London, under whom he acts, we determined to lay these additional affidavits directly before the Board and called for that purpose. We there learned that on the day previous, the next day after we had submitted the affidavits to the Collector, they had decided that the evidence disclosed in the affidavits was not sufficient, and had directed the Collector at Liverpool not to detain the vessel. I mentioned the fact that we had consulted with Mr. Collier, a barrister, in London. This man had been previously consulted by Mr. Adams. He is Queen's Counsel to Admiralty, a member of Parliament, and stands high in his profession. After learning this extraordinary decision of the Board, we again consulted Mr. Collier, and procured from him an opinion in writing, that the evidence which we had submitted to the Collector was quite sufficient to warrant the detention of the vessel. Mr. Squarey, my solicitor, then addressed a letter to the Board, inclosing a copy of this opinion, and the two additional affidavits, and asked them to reconsider their decision.

* * * * * *

"I have done about all I can do to stop this vessel; much more, I think, than this Government ought to require any friendly Government to do. My counsel say I can do no more. They think the evidence not only sufficient, but conclusive, in the preliminary proceedings to detain the vessel. Indeed, they both say that it is enough to secure her condemnation before any Court. * *

"N. B.—Since writing the above I have received a copy of a letter from the Collector to Mr. Squarey, my solicitor, announcing the decision of the Board upon the case submitted to the Collector. It is a strange decision, the last part. Mr. Squarey has called upon the Collector, and asked him the meaning of this last paragraph, His response was, that this was copied from the letter addressed to him by the Board. I am instructed by my counsel that I have no power to stop the vessel; that the power to detain her is lodged in the Collector."

On 26th July, 1862, Mr. Squarey, having heard nothing, and knowing the danger of delay, wrote:

"Liverpool, *July* 26, 1862.

"GUNBOAT 'NO. 290.'

Squarey to Gardner, 26 July, 1862, vol. 3, p 31. "Sir,—I am directed to call your attention to this matter. The further affidavits were forwarded to you on the 23d instant, and I had hoped that, ere this, the decision of the Lords Commissioners of Her Majesty's Treasury might have been made known, particularly as every day affords opportunities for the vessel in question to take her departure.

"I am, sir, your obedient servant,

"A. F. SQUAREY.

J. G. GARDNER, ESQ.,

"*Secretary to H. M. Customs, Custom House, London.*"

On 28th July, 1862, Mr. Gardner acknowledges receipt of this letter, and said:

Gardner to Squarey, 28 July, 1862, vol. 3, p 31.

"I am desired to acquaint you that in the absence of instructions from their lordships, the Board, are unable to give any directions in regard to the gunboat in question."

FURTHER EFFORTS OF MR. ADAMS.

Not only did Mr. Adams seek to obtain the seizure of the 290, (Alabama) by instructing Mr. Dudley to bring the evidence directly before the Collector of Customs, but he personally wrote to Earl Russell on 22d July, 1862:

Adams to Russell, 22 July, 1862, vol. 3, p 21.

"My Lord,—I have the honor to transmit copies of six depositions, taken at Liverpool, tending to establish the character and destination of the vessel to which I called your Lordship's attention in my note of the 23d June last. The originals of these papers have already been submitted to the Collector of the Customs at that port, in accordance with the suggestions made in your Lordship's note to me of the 4th July, as the basis of an application to him to act under the powers conferred by the Enlistment Act. But I feel it to be my duty further to communicate the facts as there alleged to Her Majesty's Government, and to request that such further proceedings may be had as may carry into full effect the determination which, I doubt not, it ever entertained to prevent by all lawful means the fitting out of hostile expeditions against the Government of a country with which it is at peace."

On 23d July, Mr. Squarey wrote to Mr. Adams, as follows:

Squarey to Adams, 23 July, 1862, vol. 3, p. 29.

"SIR: I beg to inform you that I saw Mr. Laird at the Foreign office after leaving you this afternoon, and ascertained from him that the papers forwarded by you in reference to the gunboat No. 290 were submitted yesterday to the law officers of the crown for their opinion. The opinion had not, up to the time of my seeing Mr. Laird, been received, but he promised on my representation of the extreme urgency of the case, to send for it at once. Mr. Laird was not disposed to discuss the matter, nor did he read Mr. Collier's opinion."

On 24th July, 1862, Mr. Adams wrote to Earl Russell—

Adams to Russell, 24 July, 1862, vol. 3, p. 26.

"My Lord: In order that I may complete the evidence in the case of the vessel now fitting out at Liverpool, I have the honor to submit to your Lordship's consideration the copies of two more depositions taken respecting that subject.

"In the view which I have taken of this extraordinary proceeding as a violation of the enlistment act, I am happy to find myself sustained by the opinion of an eminent lawyer of Great Britain, a copy of which I do myself the honor likewise to submit."

On 28th July, 1862, Earl Russell wrote to Mr. Adams, as follows:

Russell to Adams, 28 July, 1862, vol. 3, p. 33.

"Sir: I have the honor to acknowledge the receipt of your letters of the 22d and 24th instant, relative to the vessel alleged to be fitting out at Liverpool for the service of the so-styled Confederate States; and I am to state to you, in reply, that these papers have been referred to the law officers of the Crown."

THE "290" IS OFF.

On 29th July, 1862, Mr. Squarey telegraphed;

"F. G. Gardner, Esq.,
"*Secretary to H. M. Commissioners of Customs,*
"*Custom House, London.*

"The vessel "No. 290," came out of dock last night and left port this morning."

The same day he wrote Mr. Gardner, as follows:

[No. 290.]

Squarey to Gardner, 29 July, 1862, vol. 3, p. 31.

"Sir: We telegraphed you this morning that the above vessel was leaving Liverpool; she came out of dock last night, and steamed down the river between 10 and 11 a. m.

"We have reason to believe she has gone to Queenstown.

"J. G. GARDNER, *Secretary.*"

On 30th July, the following letter was written to Mr. Squarey :

Com'rs of customs to Squarey, 30 July, 1862, vol. 3, p. 32.

"Custom House,
"London, *July* 30, 1862.

"Gentlemen : I am desired by the commissioners of Her Majesty's customs, to acknowledge the receipt yesterday of your telegraphic message, apprising me of the departure from Liverpool of the gunboat stated to have been fitted out for the so-called Confederate States of America ; also your letter of yesterday's date, stating that you have reason to believe that the vessel in question has gone to Queenstown, and I am to acquaint you that by direction of the board the substance of your telegram was immediately on its receipt communicated to the Lords commissioners of Her Majesty's treasury, and that the same course has been adopted in regard to your letter received this morning.

"I am, gentlemen, your most ob't serv't,
"GEO. DICKINS,
"*Asst. Secretary.*"

REASON OF HASTE BY "290."

On 29th July, 1862, or at some time after, an officer of the Alabama wrote in his private Journal :

App. No. 7, vol. 4, p. 181.

"After the outbreak of the war, the immense naval superiority of the North gave them considerable advantages over the South, who, lacking convenience and material, were not able to build vessels with sufficient dispatch, and the Confederate States government sent over Captain J. D. Bullock to England for the purpose of purchasing a war steamer. Accordingly, the 290 was built, and intended for a Confederate vessel of war."

* * * * *

"At 9.15 A. M. of the 29th July, 1862, we weighed anchor, and proceeded slowly down the Mersey, anchoring in Moelfra Bay—having on board relatives and friends of the builders, both ladies and gentlemen. Our ostensible object in sailing was to go "on a trial trip," and the presence of the ladies and gentlemen gave a certain color to the report. In the evening transferred our visitors to a steam tug. We remained here, shipping hands, &c., till 2 A. M. of the 31st, when we got under way, ostensibly bound to Nassau, Bahamas. A strong breeze was blowing from the southwest, accompanied with heavy rain, a boisterous sea running at the time, forming altogether a most uninviting picture, and one not at all calculated to augur good luck.

"*Our unceremonious departure was owing to the fact of news being received to the effect that the Customs authorities had orders to board and detain us that morning.*"

"290" AT MOELFRA BAY.

From Liverpool the Alabama ran down to Moelfra Bay, and lay there from Tuesday night, July 29th, till morning of August 1.

On 30th July, Mr. Dudley wrote to the Collector of Customs:

Dudley to Edwards 30 July, 1862, v. 3, p. 136.

"I beg now to inform you that she left the Birkenhead dock on Monday night, and yesterday morning left the river, accompanied by the Steam tug Hercules.

"The Hercules returned last evening, and her master stated that the gun-boat was cruising off Point Lynas; that she had six guns on board concealed below, and was taking powder from another vessel.

"The Hercules is now alongside the Woodside landing stage, taking on board men (forty or fifty) beams, evidently for gun-carriages, and other things to convey down to the gun-boat."

Morgan to Edwards, 30 July, 1862, v. 3, p. 137.

On the same day Surveyor Morgan wrote to the Collector Edwards:

"I visited the tug Hercules this morning as she lay at the landing stage at Woodside, and strictly examined her hold and other parts of the vessel. She had nothing of a suspicious character on board; no guns, no ammunition, or anything appertaining thereto. *A considerable number of persons, male and female, were on deck, some of whom admitted to me that they were a portion of the crew, and were going to join the gunboat.*"

Edwards to Com. of Cust. 30 July 1862, v. 3, p. 137.

This report of Morgan was sent by Edwards to the Commissioners of Customs on 30th July. I extract from his letter:

"I beg to enclose his report, observing that he perceived no beams, such as are alluded to by the American Consul, *nor anything on board that would justify further action on my part.*"

So the Hercules was allowed to reinforce the "290" with a crew of Englishmen enlisted to destroy the commerce of the United States.

The next day this telegram was sent to Edwards in reply:

Telegram vol 3, p 137.

"Examine master of Hercules, whether he can state that guns are concealed in vessel 290, and that powder has been taken on board."

Edwards to Gardner, 31 July, '62 v. 3, p. 138.

This same day Edwards wrote in answer to F. G. Gardner: "I have the honor to state that the master cannot be found to-day; but I hope I may be able to get his deposition to-morrow."

On 1st August, the Captain of the Hercules returned and made an affidavit, that on Wednesday, July 30th, he had left Liverpool and taken with him 25 or 30 men who, he believed, were to be employed on board the "290" as part of her crew.

Note that the "290" left Liverpool on the 29th July; that the tug Hercules sailed with her; that the Hercules returned to Liverpool on the 30th; that on that day the Consul Dudley reported to Collector Edwards that the Hercules was taking on board various things to carry to the "290;" that on the same day, Surveyor Morgan examined the Hercules, and reported that she was taking on board men to join the "gun-boat."

Here then, on July 30th, was additional evidence against the "290," and available means offered to find and seize her, but no order was given.

FINAL ORDERS TO SEIZE.

It is difficult to state exactly when it was determined to seize the "290," but probably on or before July 28th.

These facts we know:

On Tuesday the 29th July, "the law officers, before whom all the evidence had been laid as it reached the Foreign office, reported to the Secretary of State for Foreign Affairs, their opinion, that the vessel should be detained."*

On the same day, early in the forenoon, the "290" left Liverpool, because it was known by the officers, that the "*Customs authorities* had orders to board and detain her."

The tug Hercules accompanied the "290," and returned to Liverpool on the same night.

On the 30th, it was known to Edwards, Collector, and other customs officers, that the Hercules was at the Woodside landing stage, taking on board men who admitted, to surveyor Morgan, that they were going to "join the gun-boat" at Moelfra Bay.

On that day no step was taken to follow or seize the "290."

On that day the Hercules carried British sailors and supplies to the "290."

On the 31st, early in the morning, the "290" left Moelfra Bay where she had been more than thirty-six hours.

---

* Prof. Bernard's "Neutrality," p. 345.

On that day, this memorandum appears to have been made in the Foreign Office:

Memo., v. 3, p. 33. "July 31, 1862, at about 7½ P. M., telegrams were sent to the collectors at Liverpool and Cork, pursuant to Treasury order, dated 31st July, to seize the gun-boat (290) should she be within either of those ports."

Similar telegrams to the officers at Beaumaris and Holyhead were sent on the morning of the 1st August. They were not sent on the 31st July, the telegraph offices to those districts being closed.

And on the 2d August, a letter was also sent to the Collector at Cork, to detain the vessel should she arrive at Queenstown.

It would seem, then, that no order was given to seize the "290" till certainly more than forty-eight hours after this seizure was determined on by the law officers, nor until forty-eight hours after the facts that such seizure was determined on was known by the customs officers at Liverpool, the Messrs. Lairds and the officers of the "290," nor until after twenty-four hours from the hour on which it was known, certainly to the customs officers at Liverpool, exactly where the "290" had gone, that she had not gone on a trial trip, and that the tug which had started with her on the 29th had returned and was taking various supplies and sailors intended to complete her equipment.

In view of these facts, the delay to seize the "290" cannot be explained except by the admission that some of Her Majesty's officers connived in and in fact aided and abetted in her escape, after it was known to them that it had been determined by the law officers that she should be seized. Certainly such an explanation would not be satisfactory.

I quote from the cruise of the Alabama, compiled from Semmes' Journal, page 100:

"At two o'clock in the morning of the 31st of July the anchor was once more weighed, and with a strong breeze from the S. W. the "No. 290" started off, ostensibly on a voyage to Nassau in the Bahamas.

"Just in time. That morning the seizure was to have been made. At the very moment that "No. 290" was heaving up her anchor, a huge dispatch "On Her Majesty's Service" was travelling down to Liverpool at the top speed of the northwestern mail, commanding the Customs authorities to lay an embargo on the ship. Morning was still but very slightly advanced when through the driving southwesterly squalls came the gold-laced officials in search of their prize, only to return in outward appearance considerably crestfallen, inwardly perhaps, not altogether so deeply grieved, as a good neutral should have been at the ill-success of their uncomfortable trip."

ALLEGED REASONS OF DELAY.

Adams to Seward, 1 Aug., 1862 vol 3, p. 35.

On 31st July Mr. Adams had an interview with Earl Russell, of which he wrote Mr. Seward on next day as follows:

> "His Lordship first took up the case of 290, and remarked that a delay in determining upon it had most unexpectedly been caused by the sudden developement of a malady of the Queen's advocate, Sir John D. Harding, totally incapacitating him for the transaction of business. This had made it necessary to call in other parties, whose opinion had been at last given for the detention of the gun-boat, but before the order got down to Liverpool, the vessel was gone. He should, however, send directions to have her stopped if she went, as was probable, to Nassau."

The reasons for delay given by Earl Russell on the day the Alabama left English waters, even if they were satisfactory, to explain the seven days delay that had taken place at the Foreign office from the 22d July, on which day Mr. Adams had sent to that office, other affidavits and the affidavit of Passmore, till the report made by the law officers on the 29th, do not in any way explain the delay and inaction of the forty-eight hours immediately following the report of the law officers as made to the Foreign office.

Russell to Lyons, 27 Mch., 1863, v. 1, p. 584.

It is very evident that, when nearly a year later, Earl Russell said to Mr. Adams that the Oreto and the Alabama, had eluded the operations of the foreign enlistment act and had against the will and purpose of the British Government, made war upon American commerce in the American seas, and admitted to him that the cases of the Alabama and Oreto were a scandal, and in some degree a reproach to English laws; he knew of some reasons for the delay to seize the "290" which he had never given to Mr. Adams and of some scandalous act of English officials which has never been made public.

THE ARMAMENT.

On 31st July, the "290" left Moelfra Bay, and made straight for Terceira one of the Azores, here she was met by the sailing bark Agrippina from London, and was joined a little later by the steamer Bahama which had cleared from Liverpool on 13th August.

These two vessels between them brought her armament, the transhipment was soon effected, Captain Semmes assumed command, and the "290" became the Alabama and started on her cruise. I need not say that this cruise was against the commerce of the United States, and that the truth of the statements and affidavits, made in behalf of the United States to the English Government, in regard to the building and equipping of this vessel have all been proven to be true. I quote at length from the deposition of Clarence Yonge, who was paymaster on board this vessel; the deposition shows the intent with which the vessel was built and equipped, and the truth of all the representations made by Mr. Adams.

THE PAYMASTER'S STORY.

Deposition, vol. 3, p. 145.

"I, Clarence Randolph Yonge, citizen of the State of Georgia, in the United States, late paymaster on board the steamer Alabama, formerly called the 290, and also called the Eureka, and was built by Messrs. Laird, of Birkenhead, in England, make oath and say as follows:

"I came to England in the steamer Annie Childs, which sailed from Wilmington, in North Carolina, early in February, 1862, and landed in England on or about the 11th of March, 1862, and remained in Liverpool until the steamer Alabama went to sea. I came over for the express purpose of acting as paymaster to the Alabama. I engaged for that purpose with Captain James D. Bullock, at Savannah, Georgia. He had full authority from the Confederate Government in the matters about to be mentioned. Lieutenant North had been sent over to England by the Confederate Government to get iron-clad vessels built. Captain Bullock had been over previously, and had made the contract for building the Oreto and the Alabama, and was returning to England to assume the command of the latter ship. He was directed at the time to assist Lieutenant North with his advice and experience in building the iron-clads which Lieutenant North had been over here expressly to get built. I was in the naval paymaster's office, in Savannah, Georgia, under the Confederate Government. Captain Bullock wanted some one to accompany him, and I was recommended by the paymaster at Savannah to Captain Bullock. I was then released by the paymaster from my engagement, and was subsequently appointed by Captain Bullock, under the written authority of Mr. S. R. Mallory, the secretary of the navy, a pay master in the Confederate navy, and assigned to the Alabama. I continued as paymaster in the navy of the Confederate States of America from the time of my appointment in Savannah, Georgia, up to the time of my leaving the Alabama at Port Royal, in January, 1863. The date of my appointment as paymaster in the Confederate navy was the 21st day of December, 1861. Previous to this time I had attended to Captain Bullock's correspondence with the Confederate Government, and I therefore knew that these two vessels, afterwards called the Oreto and Alabama, were being built in England for the Confederate Government, and by the same means I knew that Captain Bullock, who is a commander in the Confederate navy, was the acknowledged agent of the Confederate Government for the purpose of getting such ships built.

* * * * * *

From the time of my coming to England until I sailed in the Alabama my principal business was in paying the officers of the Confederate navy who were over here attached to the Alabama, and sent over for that purpose. I used to pay them monthly, about the first of the month, at Fraser, Trenholm & Co.'s office in Liverpool, and I drew the money for that purpose from that firm. Commander James D. Bullock, John Low, lieutenant; Eugene Maffitt, midshipman, and E. M. Anderson, midshipman, came over to England in the same vessel with myself. Captain Bullock came over to England in the first instance to contract for building the two vessels—the Oreto, now called the Florida, and the Alabama. He came so to contract for and in behalf of the Southern Confederacy, with the understanding that he was to have command of one of the vessels. I have heard him say so; and I have learned this also from the correspondence between him and Mr. Mallory, secretary of the Confederate navy, as before mentioned, which passed through my hands. At the commencement of my engagement with Captain Bullock I acted as his clerk. The contract for building the Alabama was made with Messrs. Laird, of Birkenhead, by Captain Bullock. I have seen it myself. I made a copy from the original. The copy was in the ship. It was signed by Captain Bullock on the one part, and Messrs. Laird on the other. I made the copy, at the instance of Captain Bullock, from the original, which he has. The ship cost, in United States money, about two hundred and fifty-five thousand dollars. This included provisions, &c., enough for a voyage to the East Indies, which Messrs. Laird were, by the contract, to provide. The payments were all made before the vessel sailed, to the best of my belief. Sinclair, Hamilton & Co., of London, had money. Fraser, Trenholm & Co., of Liverpool, had money. There was Government money in both their hands over here, enough for the purpose of paying for them. I was over to see the Alabama before she was launched from Messrs. Lairds' yard, and was on board the vessel with Captain Bullock; and have met Captain Bullock and one of the Messrs. Laird at Fraser, Trenholm & Co.'s office. Captain Bullock superintended the building of the Alabama and Oreto, also, while he was here. Captain Matthew J. Butcher was the captain who took her to sea. He is an Englishman, and represented himself belonging to the royal naval reserve. At the time the Alabama was being built by Messrs. Laird, and when I saw them at different times at their yard in Birkenhead and at Fraser, Trenholm & Co.'s office, I have not the slightest doubt that they perfectly well knew that such steamer was being built for the Southern Confederacy, and that she was to be used in war against the Government of the United States. When the vessel sailed from Liverpool she had her shot-racks fitted in the usual places; she had sockets in her decks, and pins fitted which held fast frames or carriages for the pivot guns and breaching bolts. These had been placed in by the builders of the vessel, Messrs. Laird & Co. She was also full of provisions and stores; enough for four months' cruise. When she sailed she had beds, bedding, cooking utensils and mess utensils for one hundred men, and powder tanks fitted in. We sailed from Liverpool on the 29th day of July, 1862. This was some three or four days sooner than we expected to sail. The reason for our sailing at this time, before we contemplated, was on account of information which we had received that proceedings were being commenced to stop the vessel from sailing. Captain Bullock sent Lieutenant Low to me on Sunday evening, the 27th day of July, to say that I must be at Fraser, Trenholm & Co.'s office early next morning. The next morning I arrived at half-past nine o'clock. Captain Butcher came in and told me the ship, (which at that time was called the 290, also Eureka) would sail the next day, and he wanted me to go with him. In a few minutes Captain Bullock came in and told me he wanted me to be ready to go to sea at a minute's notice; that they were going to send her right out. I placed my things on the vessel that evening. There were about seventy or eighty men in the vessel at this time, under Captain Butcher, who had been in command of the vessel for more than a month before she sailed. I went on the vessel on the morning of the 29th of July for the purpose of sailing. We started out of the river Mersey at about half-past ten o'clock. Captain Butcher commanded. Mr. Low acted as first mate, George T. Fullam as second mate, and David Herbert Llewellyn as assistant surgeon. Captain Bullock, Lieutenants North and Sinclair were on board; also the two Messrs. Laird, Mr. A. E. Byrne, and five or six ladies, (including two Miss Lairds,) and some other gentlemen whom I do not know. When we sailed it was not our intention to return, but it was with the intention of going to sea, and so understood by us all. The ladies and passengers were taken on board as a blind. After we got on board one of the Messrs. Laird who built the vessel came to me and gave me three hundred and twelve pounds in English gold. Captain Bullock came and asked me if Mr. Laird had given me the money; that he had some to give me, which I must put in the safe. I told him I had not received it, and went to Mr. Laird and got it. Laird counted it out for me, and I gave him a receipt for the amount. Mr. Laird gave me a number of bills and receipts at the same time for things he had been purchasing for the vessel—beds, blankets, tinware, knives, forks, for the ship; all of which he (Mr. Laird) had purchased from various parties on account of the ship. My understanding was that the money given me was the balance of the money left after making these purchases. The bills and receipts which Mr. Laird gave me on this occasion, on account of the purchases he had made, were left on the ship, and were handed over by me to Francis L. Galt, who has succeeded me as paymaster on the ship. There was a tugboat in attendance when we left Liverpool on the 29th of July, in which the ladies and all the passengers left. We ran down immediately for Moelfra Bay, and lay there all that night, all the next day and next night, until three o'clock on Friday morning. I copied a letter of instructions from Captain Bullock to Captain Butcher, in which Captain Butcher was directed to proceed to Porto Praya, in Terceira, one of the Azores, where it was intended that we should go to receive the armament. I knew, and all the officers knew, before we went on board, that this vessel had been built for the purpose, and was to go out with the intention of cruising and making war against the Government and people of the United States. This, as I verily believe, was well known by the Messrs. Laird who built her and helped to fit her out, and by Fraser, Trenholm & Co., and by A. E. Byrne, of Liverpool, who also assisted in fitting her out, and by Captain Butcher and the other officers who sailed in her. The next day after we left, the tugboat Hercules came to us from Liverpool, about three o'clock. She brought to us Captain Bullock and S. G. Porter, (who for a time superintended the fitting the vessel,) and some two or three men. The men signed articles that night. They had signed articles before at various times while in Liverpool, but they all came up again and renewed the articles. The advance notes had been given them in Liverpool by Captain Butcher, and made payable at Cunard, Wilson & Co.'s. The original articles are now in Fraser, Trenholm & Co.'s office, but in possession of Captain Bullock, who transacts all his business and keeps all his papers at Fraser, Trenholm & Co.'s. I do not know the name of the man who acted as the shipping master at Liverpool. Captain Bullock wrote a letter of instructions to me before we left Liverpool, directing me to circulate freely among the men and induce them to go on the vessel after we got to Terceira. I accordingly did circulate among the men on our way out, and persuaded them to join the vessel after we should get to Terceira. Low did the same. We sailed from Moelfra Bay at three o'clock on Friday morning. We went out through the Irish Channel.

Captain Bullock left us at the Giant's Causeway. We were some ten or eleven days going out to Terceira. Were in quarantine for three days at Porto Praya. There was no transfer of the vessel or anything of the kind there. The bark Agrippina, from London, arrived there with a part of the armament, all the ammunition, all the clothing, and coals. She was commanded by Alexander McQueen. The first day after the arrival of the bark she was getting ready for discharging. This bark is owned by the Confederate Government, but is nominally held by Sinclair, Hamilton & Co., of London, and sails under the British flag. This firm are connected with the Confederate Government. Early the following day the bark Agrippina hauled alongside, and we commenced to take the guns on board. Two or three days after this the Bahama arrived with the officers. This steamer was in command of Captain Tessier. She also sailed under the British flag. The Bahama came in, and Captain Butcher went on board and received orders to sail to Angra. The Bahama took the bark in tow, and we all went round to Angra. After we got there we were ordered away by the authorities. There was also some correspondence took place between Captain Butcher and the British consul at that place, but I never heard what it was. We went out, and continued discharging and taking in all that day, and at night we and the bark run into the bay, the Bahama keeping outside. By this time we had got all the guns, ammunition, and cargo from the steamer and bark. During all this time the three vessels were sailing under the British flag. We finished coaling on Sunday, the 24th day of August, at about one o'clock. We received from the bark Agrippina four broadside guns, each 32-pounders, and two pivot guns, one 68-pounder solid-shot gun, and one 100-pounder rifled gun; one hundred barrels of gunpowder, a number of Enfield rifles, two cases of pistols, and cartridges for the same. All the clothing for the men was also received from the Agrippina, and the fuses, primers, signals, rockets, shot, shell, and other munitions of war needed by the ship; also a quantity of coal. We received from the Bahama two 32-pounder broadside guns, a bale of blue flannel for sailors' wear, and a fire-proof chest with fifty thousand dollars in English sovereigns and fifty thousand dollars in bank bills. Captain Butcher, or Mr. Low, the first mate, told me that Mr. M. G. Klingender had been directed to purchase in Liverpool, where Mr. Klingender resides and does business as a merchant, such supplies of tobacco and liquor as were required for the ship's use. I made out the advance notes for the men at Liverpool, on the 28th of July, 1862, while she was lying in the Birkenhead docks, which advance notes were made payable by Cunard, Wilson & Co., at Liverpool. The half-pay notes which I made out in Moelfra Bay on board the No. 290, were made payable at Liverpool by the aforesaid M. G. Klingender. After we arrived at Angra, and had armed the ship, and were leaving that port to enter upon the cruise, we were still under the British flag. Captain Semmes then had all the men called aft on the quarter-deck. The British flag was hauled down and the Confederate one raised. He then and there made a speech, read his commission to them as commander in the Confederate navy, told them the objects of the vessel, and what she was about to do; mentioned to them what their proportion of prize money would be out of each one hundred thousand dollars' worth of property captured and destroyed; said he had on board one hundred thousand dollars, and asked them to go with him, at the same time appealing to them as British sailors to aid him in defending the side of the weak. I had two sets of articles prepared—one for men shipping for a limited time, the other for those willing to go during the war. The articles were then re-signed while the vessel was in Portuguese waters, but under the Confederate flag. This was on Sunday, the 24th August, 1862. At the same time Captain Semmes announced that the ship would be called the Confederate States vessel Alabama. The guns which were brought out to the No. 290 in the Agrippina and the Bahama were made and furnished by Fawcett, Preston & Co., of Liverpool. The ammunition and entire armament of the vessel, as well as all the outfit, were purchased in England. The list hereunto annexed, marked A, contains a list of the names of all the officers on the Alabama when I left,* except myself, and of all the men whom I can now remember. My belief is that we had eighty-four shipped men, inclusive of the firemen and coal-trimmers, when we left Angra. All the men but three signed the articles for the period of the war. New half-pay notes were then drawn in favor of and given to the men. The half-pay notes entitled their families or friends to draw half of their pay on the first of every month. They were all payable by Fraser, Trenholm & Co., with whom the money for the purpose of meeting them was lodged. The first set of notes (payable at Cunard, Wilson & Co.'s) were in the form of the British marine service. The second set (payable at Fraser, Trenholm & Co.'s) were in the form used by the United States and Confederate navy. Several of the men refused to sign, and returned in the Bahama to Liverpool. Captain Butcher and Captain Bullock also returned in the Bahama. We then entered upon our cruise. Out of the eighty-four men I believe there were not more than ten or twelve Americans. There was one Spaniard, and all the rest were Englishmen. More than one half of the Englishmen belonged to the royal naval reserve, as they informed me, and as was generally understood by all on board. Four, at least, of the officers were English—that is to say, John Low, fourth lieutenant; David Herbert Llewellyn, assistant surgeon; George T. Fullam, master's mate; and Henry Allcott, the sail-maker. I never remember at any time seeing any custom-house officer aboard this vessel. I remained aboard the vessel as paymaster from the time I joined her, as before stated, until the 25th day of January, 1863, at which time she was lying at Port Royal, Jamaica. During the whole time that I was on board her she was cruising and making war against the Government and people of the United States. I cannot recollect the names of all the vessels which she captured, but I know that the number which we captured and destroyed up to the time I left her was at least twenty-three, and, as I believe, was more. * * * *

---

* Of sixty-two officers and seamen, fifty appear to have been Englishmen.

* * The first port we went into after leaving the Western Islands was Port Royal, Martinique, where we went to provision and coal. The bark Agrippina was lying with coals for us, being the same vessel as took out the armament. We did not provision or coal there, but we went out, and afterwards met the Agrippina at the Island of Blanco, belonging to Venezuela. We only took in coal there. We then proceeded to the Arcas Keys, near Yucatan Banks, where we lay about ten days; where we painted the ship and re-coaled from the Agrippina, and gave the men a run on shore. We then steered for Galveston, where we destroyed the United States gunboat Hatteras, which was the last vessel we destroyed before I left her. As soon as we got the prisoners from the Hatteras on board we started straight for Jamaica, (Port Royal.) There we provisioned, coaled, and repaired ship. All the twenty-three ships which we had burned or destroyed had been so burned or destroyed in the interval between our leaving the Western Islands and steering for Port Royal. I heard of no objection from the authorities in Jamaica to our repairing, coaling, or provisioning the ship in Port Royal; but, on the contrary, we were received with all courtesy and kindness. We were there about a week. Whilst we were there the English admiral at Port Royal paid a visit to Captain Semmes, on board the Alabama. I was on shore on duty at the time of the visit, but I heard of such visit immediately upon my return to the ship, for it was the subject of much conversation and remark amongst the officers; and, in particular, I remember Mr. Sinclair, the master, speaking of it. I also know that Captain Semmes paid a return visit to the English admiral on the day that the Alabama left Port Royal. I myself saw him start for the purpose. My connection with the ship terminated at Port Royal, and I subsequently came to England, where I arrived on 22d March, 1863.

This affidavit was voluntarily made before John Payne, acting commissioner, &c., on the 2d day of April, 1863, and two days afterwards was transmitted in copy to Earl Russell by Mr. Adams, in the nature of cumulative evidence to show the execution of a deliberate plan to establish within the limits of Great Britain "a system of action in direct hostility to the Government of the United States."

The whole affidavit should be read and in itself almost establishes the *Alabama* claims.

The affidavit of Yonge tells the story of the Alabama till March, 1863. From the day she left Moelfra Bay she was received most hospitably in all the ports of Her Majesty. From these ports she took her coal and other supplies which appear to have been regularly sent her from London.

CHEERS AND FRENZY AT CAPE OF GOOD HOPE.

The British colony at Cape of Good Hope offered the Alabama a good cruising ground and protection. She had been at anchor at Saldanha Bay for several days; and one of her officers thus writes of the events of the 5th and 6th of August, 1863.

Journal v. 4, p. 200.

"5th, 6 a. m.—Got under weigh and stood out of the bay along the land in chase of a sail. Nearing her, it was found to be the Confederate States bark Tuscaloosa, Lieutenant Commanding Low. I boarded and brought him off to communicate with Captain Semmes. Took him off again and parted company. At 1:30 p. m. stood in chase of a sail; 3 p. m. overhauled him, we being under English colors, She then showed United States colors, fired a blank cartridge. hauled down the English, and hoisted the stars and bars. Ran alongside and ordered him to heave to or we would fire into him. Showing no disposition to heave to, a musket shot was fired over him, after some delay she hove to. Sent Mr. Evans on board. Found her to be the bark Sea Bride, of Boston, from New York to Cape Town. We being five miles distant from land by cross-bearings. 3:10.—I was sent on board as prize master with eight men. The captain, mates, and men sent on board from prize. 3:30, came to an anchor in seven fathoms water in Table Bay; banked fires. Lieutenant Wilson sent on shore to visit the Governor. Visitors coming on board in numbers. 5:15.—English mail steamer Lady Jocelyn anchored near us; the crew cheering us as they passed. 10:30 p. m.—H. B. M. sloop of war Valorus anchored near us.

"6th. The enthusiasm displayed by the inhabitants of the Cape amounts almost to a frenzy. All day crowded with visitors."

We understand the reason why the crew of the English mail steamer cheered, and why the inhabitants of the Cape were so frenzied by enthusiasm. They had probably seen the chase of the Sea Bride by the Alabama flying English colors, and the capture within English waters, for from evidence furnished afterwards by the U. S. Consul, such appears to have been the fact.

Vol. 4, p. 215 to 243. The Tuscaloosa alluded to in the above extract came a few days later into Simons Bay, and was allowed to depart therefrom contrary to the remonstrances of the United States Consul and to the principles of international law as since admitted by the English Government.

She was originally the bark Conrad of Philadelphia, and about six weeks previous to this date had been captured by the Alabama and transformed into a tender, two guns having been put on board of her.

I have given this incident subsequent to the story as told by Mr. Yonge. The Alabama went on to burn and destroy till she was sunk off of Cherbourg on the 19th of June, 1864, after a fight of one hour by the United States steamer, Kearsarge commanded by Captain Winslow. The English steam Yacht, Deer Hound, built by the Lairds in their yard at the same time they were building the "290" was on hand to render assistance to the Alabama and took an active part in rescuing and running away with her officers and men.

In a little less than two years the Alabama had captured seventy vessels of the United States. And the owners of these vessels and their cargoes claim dollars for their loss.

THE GEORGIA.

Vol. 5, 577. Hansard, vol. 175, p. 467–514.

For a short history of this vessel, I quote from the speech of Mr. Baring in the House of Commons, 13th May, 1864, made in a debate relative to the reception of the Georgia at Liverpool.

"The Japan, otherwise the Virginia, commonly known as the Georgia, was built at Dumbarton, on the Clyde. She was equipped by a Liverpool firm. Her crew were shipped by the same Liverpool firm for Shanghai, and sent round to Greenock by steamer. She was entered on the 31st March, 1863, as for Point de Galle and Hong Kong, with a crew of forty-eight men. She cleared on the 1st April. She left her anchorage on the morning of the 2d of April, ostensibly to try her engines, but did not return. She had no armament on leaving Greenock, but a few days after her departure a small steamer named the Allar, freighted with guns, shot, shell, &c., and having on board a partner of the Liverpool firm who had equipped her, and shipped her crew, left Newhaven and met the Georgia off the coast of France, near Ushant. The cargo of the Allar was successfully transferred to the Georgia on the 8th or 9th of April; her crew consisted of British subjects. The Allar put into Plymouth on the 11th April, bringing the Liverpool merchant who had directed the proceedings throughout, and bringing also fifteen seamen who had refused to proceed in the Georgia, on learning her real character. The rest of the crew remained.

"At the time of her departure the Georgia was registered as the property of a Liverpool merchant, a partner of the firm which shipped the crew. She remained the property of this person until the 23d June, when the register was cancelled, he notifying the collector of her sale to foreign owners. During this period, namely, from the 1st April to the 23d June, the Georgia being still registered in the name of a Liverpool merchant, and thus his property, was carrying on war against the United States, with whom we were in alliance. It was while still a British vessel that she captured and burned the Dictator, and captured and released under bond the Griswold, the same vessel which had brought corn to the Lancashire sufferers.

." The crew of the Georgia were paid through the same Liverpool firm. A copy of an advance note used is to be found in the diplomatic correspondence. The same firm continued to act in this capacity throughout the cruise of the Georgia. After cruising in the Atlantic and burning and bonding a number of vessels, the Georgia made for Cherbourg, where she arrived on the 28th of October. There was at the time much discontent among the crew. Many deserted, leave of absence was given to others and their wages were paid all along by the same Liverpool firm. In order to get the Georgia to sea again, the Liverpool firm enlisted in Liverpool some twenty seamen and sent them to Brest. The Georgia left Cherborg on a second cruise, but having no success she returned to that port and thence to Liverpool, where her crew have been paid off without any concealment, and the vessel is now laid up. Here then, is the case of a vessel clandestinely built, fraudulently leaving the port of her construction, taking Englishmen on board as her crew, and waging war against the United States, an ally of ours, without once having entered a port of the power, the commission of which she bears, but being for some time the property of an English subject. She has now returned to Liverpool, and has returned, I am told, with a British crew on board, who having enlisted in war against an ally of ours, have committed a misdemeanor in the sight of the law."

In the same debate Mr. Forster said, vol. 5, p. 586 : " It was said that no one would have a right to call this vessel a British pirate ; he (Mr. Foster) had never called any of those vessels by that name, but they must remember what the Georgia was. The Georgia was a Confederate vessel which notoriously had been built in England, and sailed from Scotland having on board at the time she sailed a crew solely composed of British subjects, with two exceptions, and of those exceptions, one was a man belonging to Sweden and the other to Russia. She received on the coast of France her equipment from England, and was owned by a English merchant for months after she began to take prizes. The certificate states that she was sold to a foreigner on the 23d June, 1863."

"Lastly, this ship never having been in a Confederate port had come back to Liverpool under the pretense of paying off her crew."

All the statements as made by Mr. Baring and Mr. Forster were true, for particulars see Vol. 2, U. S. Claims against Great Britain, pages 665 to 725, giving correspondence and affidavits, see also trial of Jones and Highat, his partner, for violation of the Foreign Enlistment Act in recruiting for Georgia, Vol. 4, U. S. Claims against Great Britain, p. 550 to 571. This prosecution was began Jan'y, 1864. The parties were convicted and sentenced in November of the same year.

It does not appear that any information in regard to the Japan was given to the English Government by Mr. Adams previous to her sailing, on the 2d April, 1863.

As the vessel had been in Scotland, the matter was more particularly in charge of Mr. Underwood. That there were suspicious circumstances about this vessel which, after the experience had in the cases of the Florida and the Alabama, should have attracted the attention of the English Government to make an investigation which in the end would have resulted in her seizure is evident from the letter of Mr. Dudley to Mr. Seward, written on 3d April, when he had no knowledge that she had escaped:

Dudley to Seward, 3 April, 1863, vol 2, p 665.

"Mr. Underwood, our consul at Glasgow, has, no doubt, informed you about the steamer now called the Japan, formerly the Virginia, which is about to clear from that port for the East Indies. Some seventy or eighty men, twice the number that would be required for any legitimate voyage, were shipped at Liverpool for this vessel, and sent to Greenock on Monday evening last. They are shipped for a voyage of three years. My belief is that she belongs to the Confederates, and is to be converted into a privateer; quite likely to cruise in the East Indies, as Mr. Yonge, the paymaster from the Alabama, tells me it has always been a favorite idea of Mr. Mallory, the secretary of the Confederate navy, to send a privateer in these waters."

On 8th April, several days after the Japan had left the Clyde, Mr. Adams wrote to Earl Russell giving particulars of her escape and of the escape of the Allar, and said that he believed they had gone with intent to depredate upon the commerce of the people of the United States.

The same day Earl Russell acknowledged the receipt of this letter, and promised immediate inquiry. The Japan and Allar met off the coast of France, and the Japan received her armament and became the Georgia. How she was armed, who owned her, and who paid her crew, appears from the statement of Mr. Baring above quoted, and various affidavits, vol. 2, pp. 671, 672, 684, 686, 689, 692, 693, 695.

After the Georgia was armed, she left Brest, went to the Western Islands, afterwards to Bahia, and afterwards to Simons' Bay where she arrived 16th August, 1863. The Alabama had already been hospitably received there, against the protests of the American Consul, and the Georgia received the same favors, remained for a fortnight, made repairs and coaled.

From Simons' Bay she went to Cherbourg; after remaining there a while, and having increased her crew by men sent from England, she went on a short cruise, and returned to Liverpool on 2d May, 1864.

GEORGIA HOME AT LIVERPOOL.

On 13th May, a debate took place in the House of Commons in regard to the circumstances under which this vessel had been allowed to enter the port of Liverpool, Mr. Baring contended that it was the duty of the Government to shut its ports against her. The Attorney General in reply said, "I have not the least doubt that we have a right, if we thought fit, to exclude from our own ports any particular ship or class of ships, if we consider they have violated our neutrality, but such power is simply discretionary on the part of the Government, and should be exercised with a due regard to all the circumstances of the case." Farther on he in effect said, that the Government were prevented from excluding the Georgia from its ports, lest, in some way, it should give foundation to the demands arising out of the case of the Alabama, which had already been allowed to enter and depart, from various ports of Great Britain and her Colonies.

Not only was the Georgia received into Liverpool, but she was allowed to be sold to Mr. Edward Bates, and registered in his name as a British vessel. All this was done against the protests of Minister Adams, who said that the United States would refuse to recognize the transfer.

The Georgia sailed from Liverpool early in August, 1864, chartered by the Portuguese Government to proceed to Lisbon.

Russell to Adams, 8 Aug., 1864, vol 2, p 719.

On 8th August, 1864, Earl Russell wrote to Mr. Adams: "That Her Majesty's Government had given directions that in future no ship of war shall be allowed to be brought into any of Her Majesty's ports for the purpose of being dismantled or sold."

It is probable that the Georgia would again have entered on her piratical cruise, if she had not been captured, on her voyage to Lisbon, by the United States Steamer Niagara and sent home as a prize. She was afterwards condemned.

See trial, vol. 4, pp. 550 to 571.

The men, Jones & Highat, partners of Bold, and in whose name she had been registered at the time she made her first captures, were indicted under the second section of the Foreign Enlistment Act, for enlisting seaman on board the Georgia. After a full trial they were convicted, and each fined fifty pounds sterling.

Of the result of this trial Mr. Dudley writes to Mr. Seward as follows:

Dudley to Seward, 25 Nov., 1864, vol 2, p 724.

"The prosecution against Jones & Co., for fitting out and enlisting the men for the pirate Japan, *alias* Virginia, *alias* Georgia, is over, and the parties have each been fined fifty pounds sterling, making in all the sum of one hundred and fifty pounds as the penalty, or more properly the price, for fitting out a privateer in this country, to cruise and make war against the United States. Comment is unnecessary. * * * *

"The Florida, Alabama, Georgia, Georgiana, and Sea King, (Shenandoah,) all built, fitted out, armament made, ammunition supplied, crews enlisted in the country, and here paid while serving in the vessels, and the ships supplied, and coaled from England, and thus far three men alone tried, and they fined but fifty pounds apiece, making the sum total of one hundred and fifty pounds."

During the cruise the Georgia captured nine vessels belonging ing to citizens of the United States, of these four were bonded, the rest were burnt.

The claims, filed in the Department of State, for losses by the Georgia, amount to about three hundred and fifty thousand dollars.

Why the actual destruction by the Georgia was so small, appears from a statement made by Mr. Forster in the debate before referred to. He said:

"There could not be a stronger illustration of the damage, which had been done to the American trade by these cruisers than the fact that, so completely was the American flag driven from the ocean, that the Georgia on her second cruise, did not meet a single American vessel in six weeks, though she saw no less than seventy vessels in a very few days."

THE SHENANDOAH.

Adams to Russell, 21 Oct., 1865, vol 3, p 377.

The letter of Mr. Adams to Earl Russell, dated 21st October, 1865, gives a short and concise statement as to the origin, equipment and manning of the Shenandoah. It is as follows:

"On the 18th November, 1864, I had the honor to transmit to your Lordship certain evidence which went to show, that on the 8th October preceding, a steamer had been dispatched, under the British flag, from London called the Sea King, with a view to meet another steamer called the Laurel, likewise bearing that flag, dispatched from Liverpool on the 9th of the same month, at some point near the Island of Madeira. These vessels were at the time of sailing equipped and manned by British subjects; yet they were sent out with arms, munitions of war, supplies, officers and enlisted men, for the purpose of initiating a hostile enterprise to the people of the United States, with whom Great Britain was at the time under solemn obligations to preserve the peace.

"It further appears that, on or about the 18th of the same month, these vessels met at the place agreed on, and there the British commander of the Sea King made a private transfer of the vessel to a person of whom he then declared to the crew his knowledge that he was about to embark upon an expedition of the kind described. Thus knowing its nature, he nevertheless, went on to urge these seamen, being British subjects themselves, to enlist as members of it.

"It is also clear, that a transfer then took place from the British bark Laurel of the arms of every kind with which she was laden for this same object; and lastly, of a number of persons, some calling themselves officers, who had been brought from Liverpool expressly to take part in the enterprise. Of these last a considerable portion consisted of the very same persons, many of them British subjects, who had been rescued from the waves by British intervention at the moment when they had surrendered from the sinking Alabama, the previous history of which is but too well known to your Lordship.

"Thus equipped, fitted out, and armed, from Great Britain, the successor to the destroyed corsair, now assuming the name of the Shenandoah, though in no other respects changing its British character, addressed itself at once to the work for which it had been intended. At no time in her later career has she ever reached a port of the country which her commander has pretended to represent. At no instant has she earned the national characteristic other than that with which she started from Great Britain. She has thus far roamed over the ocean, receiving her sole protection from the consequences of the most piratical acts from the gift of a nominal title which Great Britain first bestowed upon her contrivers, and then recognized as legitimating their successful fraud."

SEA KING AND LAUREL SUSPECTED.

The opportunities of Mr. Dudley or Mr. Adams to learn of what was taking place in British ports were very few compared with those of Her Majesty's officers, whose duty particularly it was to see that the law was not violated, yet both the Laurel and Sea King were objects of suspicion to Mr. Dudley before they sailed, and he had written to Mr. Seward in regard to them.

Note that Mr. Dudley had so failed with his previous representations to Collector Edwards, that we find him at this time writing to Mr. Seward describing the Laurel and Sea King in order to help United States vessels to capture them, instead of reporting the facts to Mr. Edwards, who had previously, to speak very mildly, protected the Florida and Alabama against the sworn testimony presented by Mr. Dudley.

Mr. Dudley writes to Mr. Adams 7th October, 1864:

Dudley to Adams, 7 Oct., 1864, vol 3, p 316.

That the Laurel, adapted for a privateer has been bought by the Confederates, has taken on board a number of guns and gun carriages; that one of her officers was a Lieutenant on the Georgia; and that she would leave for sea on the morrow.

The Laurel did sail on the next day, the 8th of October, 1864.

On 12th October, Mr. Dudley gives full particulars of the sailing of the Laurel on the 8th. He says:

Dudley to Seward, 12 Oct., 1864, vol 3, p 318.

"Capt. Semmes, late of the Alabama, eight other Confederate officers, and about one hundred men, forty or fifty of whom were on the pirate Alabama, and all Englishmen, went out in her. She has six guns in cases stowed in her hold, all 68 pounders, with gun carriages to mount them. There is not the least doubt, but what this is a piratical expedition either on this or some other vessel."

On 18th October Mr. Dudley writes again:

Dudley to Seward, 18 Oct., 1864, vol 3, p 319.

"About the 20th of September last past, the steamer Sea King, (Shenandoah,) built at Glasgow, in 1863, was sold in London to Richard Wright, of Liverpool. On the 7th instant he gave a power to Captain Corbett to sell her at any time within six months, for any sum not less than £45,000 sterling. On the next day, the 8th instant, she cleared for Bombay, and sailed the same day with a large supply of coal and about fifty tons of metal, and a crew of forty-seven men. I was not informed of the sailing of this vessel until Sunday last, when I received a letter from Mr. Moran, Secretary of Legation, asking me who Richard Wright was. I immediately wrote him that he was the father-in-law of Charles Prioleau, of South Carolina, now residing in Liverpool, and the head man in the firm of Fraser, Trenholm & Co., the bankers and financial agents of the Southern Confederacy, and telegraphed him and our Ministers at Paris and Lisbon, that there was no doubt but what the Sea King was the vessel that the Laurel was to meet and transfer Captain Semmes, the Confederate officers, men and armament.

"There is now no longer room to doubt. The secessionists and their aiders on 'Change freely admit that this is so. The matter is also mentioned in one of the Glasgow papers of yesterday and the Journal of Commerce this morning." * * *

"The guns are from Randolph & Elder's, at Glasgow, and, I am of the opinion, of the same make for the steam frigate Pampero, built at Glasgow for the Confederates. I shall endeavor to ascertain if this is so. I think there are six 68-pounder broadside guns and two large pivot guns, gone out in the Laurel, making eight in all, but am not quite certain about it.

"Corbett, the man who took the Sea King out, is Capt. G. H. Corbett an Englishman; the crew of the Sea King, as well as that of the Laurel, I am told, are all British subjects and many of them belong to the Royal Naval Reserve. There are some forty or fifty of the Alabama's men among them. You will see that this is another case of the fitting out of an English piratical craft in this country to make war against our Government and to destroy our commerce, similar to that of the Japan, afterwards known as the pirate Georgia."

"*This Sea King is the same vessel that I saw at Glasgow on the occasion of one of my visits to that town last year. I regarded her then as a most likely steamer for the purposes of a privateer, and so reported to you at the time.* If I mistake not, she will prove herself a dangerous and destructive craft to our commerce."

SHENANDOAH ARMED.

On 16th November Mr. Dudley gives this full, particular, and strong statement in regard to the Shenandoah:

Dudley to Adams, 16 Nov., 1864, vol 3, p 323.

"I have now to inform you that the English steamer Laurel, which sailed from this port, as was at the time supposed, on a piratical cruise against the United States, on the 9th of October last, with Confederate officers and English seamen, (many of whom had belonged to the pirate Alabama,) and the English steamer Sea King that sailed from London on the 8th of the same month, met at the Island of Madeira on the 18th of October. The Sea King, on her arrival, signaled the Laurel to come out. The Laurel then steered for the Island of Porto Santo, which is within sight of Madeira, and some twenty-six miles distant, where she anchored within a quarter of a mile from the shore. The Sea King followed and also anchored within a quarter of a mile from the shore, when the Laurel came alongside, made fast, and immediately began to transfer the guns, six in number, gun-carriages, shot and shell, powder, &c., and the officers and men she brought from England to the Sea King. Captain Corbett, of the Sea King then called all the men aft, told them he had sold the vessel to the Confederates, and that she was to become a Confederate cruiser to burn and destroy merchantmen like the Alabama, and advised them all to join her. After great efforts, some of the crew of the Sea King, and some of the crew of the Laurel, after having been supplied with liquor, and under its influence were induced to enlist on her. The commander, dressed in a grey uniform, supposed to be Captain Semmes, was then introduced to the men by Captain Corbett. He told them that the Sea King was now the Confederate steamer Shenandoah. The men who refused to enlist in the Shenandoah were taken on the Laurel and conveyed to Teneriffe, from where they, with Captain Corbett and his officers, were brought to this port, on the 13th instant, in the steamer Calabar. When they left the Sea King (now called the Shenandoah) she had the Confederate flag flying, and had entered, no doubt, upon her cruise of burning and destruction. The men who refused to enlist on board were told when they reached Teneriffe that they must say they were destitute British seamen, and that their vessel was lost. Those who returned to this port were paid off on Saturday and yesterday at the Sailors' Home in Liverpool. Three months' extra wages were given to each man, in addition to what was due him, the clerk of Mr. Wright, the owner of the vessel when she sailed, paying the money. The owner of the Sea King, Richard Wright, is a British subject and merchant, residing in Liverpool. He was in the vessel when she sailed, and accompanied her as far as Deal. Captain Peter S. Corbett and his officers, who took her out, were also British subjects. Henry Lafone, the owner of the Laurel is also a British subject and merchant, residing in Liverpool. Captain Ramsey, who commanded the Laurel, is likewise a British subject. Both vessels, the Sea King and Laurel, are British, and were built on the Clyde, and sailed under the British flag. The men from the Laurel and Sea King who enlisted are also British subjects. The armament, shot, shell, gunpowder, and everything down to the coal in the hold are English—all the produce or manufacture of Great Britain. Even the bounty money paid for enlisting the men was English sovereigns, and the wages to be paid for the crews is contracted for, and to be paid, in English coin—pounds, shillings and pence. It seems to me that nothing is wanting to stamp this as an English transaction from beginning to end; and the vessel now called *the Shenandoah is an English piratical craft, without regard to the color she may display or show when in chase of a peaceful merchantman or whaler, or when she lights up the ocean with her fire.* Captain Corbett and his officers, and Richard Wright and Henry Lafone, no doubt, are now in Liverpool, rejoicing over their successful exploit in setting afloat another vessel to destroy and burn peaceful ships belonging to the people of the United States. I inclose you copies of the affidavits of John Hercus and John Wilson, two of the crew of the Sea King, now in Liverpool, establishing the above facts."

Mr. Dudley's prophecy was fulfilled and the Shenandoah afterwards lit up the north Pacific with thirty burning whalers.

AN ENGLISH OFFICER WITH HONEST EYES.

After the transfer to the Shenandoah, the Laurel touched at Teneriffe, in the Madeira Islands, and landed some of the sailors who refused to enlist in the Shenandoah. Capt. Corbett was with them, and they pretended that they were the master and crew of the British Steamer Sea King of London, which vessel had been wrecked off the Desertas.

Mr. Grattan was the English Consul at Teneriffe, and to show how easy it was for an English officer to arrive at the truth, and as a contrast to the subsequent action of the English officers when the Shenandoah arrived at Melbourne, I quote from the letter of Mr. Grattan to Earl Russell.

Grattan to Russell, 30 Oct., 1864, v. 3, p. 331.

He says: That the discrepancy of the statement of the two masters, (viz: Corbett of the Shenandoah, and Ramsey of the Laurel,) led him to seek for further information respecting the matter, and the substance of the declaration he had obtained from the seamen of the Sea King was as follows:

> "The Laurel sailed from Liverpool, bound to Nassau, with twenty-six supposed officers and sixty-two seamen besides her own crew, sixty-five to sixty shells, about five tons of gunpowder, and various other munitions of war. She proceeded to Madeira, where she took about three hundred tons of coal. The Sea King sailed from London on the 7th instant, and also proceeded to the offing of Funchal Roads.
>
> "Both vessels then steamed to a place off the Desertas, where the sea was smooth, and the officers and men, arms and munitions of war, were transferred from the Laurel to the Sea King, on the 20th instant. The cases of arms were at once opened, and the seamen armed themselves with cutlasses and revolvers. One of the officers took command of the vessel in the name of the Government of the so-called Confederate States of America. Some of the crew of the Laurel joined the Sea King. The remainder of the intended crew are to be sent out from England." * *

Notice what Mr. Gratton did because he thought it his duty:

> "In consequence of having become aware that a serious offense against British law had been committed on board a British ship, I have thought it my duty to take the depositions upon oath of four of the seamen of the Sea King, which I have the honor to forward to the Board of Trade, according to instructions.
>
> "These depositions, in my opinion, contain evidence sufficient to substantiate the charge against the master, P. S. Corbett, of an infringement of the "Foreign Enlistment Act." I therefore, pursuant to paragraph 127 of the consular instructions, deem it proper to send the offender in safe control to England, in order that cognizance of the offense may be taken."

Corbett was not tried till November, 1865, I simply note the result of the trial.

> "The jury retired at a quarter to three o'clock to consider their verdict, and in about five minutes returned a verdict of "not guilty," which was received with a slight attempt at applause. The jury asked for some additional remuneration. They ought to have a guinea a day. The Solicitor-General said he would do what was necessary."

London *News* report, vol. 4, p. 636.

Comment on this verdict is unnecessary.

THE LAUREL GOES SCOT FREE.

Adams to Russell, 7th Mch., 1865. v. 3. p. 339.

The Laurel afterwards instead of returning to England ran the blockade at Charleston where she changed her name and register and was called the "Confederate States." She then went to Nassau, and thence took a mail to Liverpool. Mr. Adams requested that such measures should be adopted as regards her, as would prevent her abusing the neutrality of Her Majesty's territory.

Earl Russell replied that the matter would be inquired into, and finally on the 6th April, 1865, wrote as follows:

Russell to Adams. 6 April, 1865, v. 3, p. 344.

"I have now the honor to inform you that Her Majesty's Government are advised that although the proceedings of the Steamer Confederate States, formerly Laurel, may have rendered her liable to capture on the high seas by the cruisers of the United States, she has not, so far as is known, committed any offense punishable by British law."

THE SHENANDOAH AS A PIRATE.

Testimony of Geo. Silvester, v. 3, p. 404, par. 14. Adamson to Adams 3 Nov 1864, vol. 3, p. 332. Monroe to Steward, 29 Nov 1864, vol. 3, p. 348.

The Shenandoah after receiving her armament at the Madeira Islands, crossed the Atlantic, rounding Cape Horn and arrived at Melbourne 25th January, 1865.

During this cruise the Shenandoah captured and burned several vessels. The vessels destroyed before she reached Melbourne were, the Bark Alina, scuttled; the schooner Charter Oak burnt; the Bark De Godfrey, burnt; the Brig Susan, scuttled; the Ship Kate Prince, bonded; the Bark Adelaide, bonded; the Schooner Lizzie M. Stacey, burned; the whaling vessel Edward, burnt; and the Bark Delphine, burnt.

On 25th March, 1865, Mr. Seward having heard of the arrival of the Shenandoah at Melbourne, wrote Mr. Adams:

Seward to Adams, 25 Mch., 1865, v. 3, p. 342.

"I trust that you have called the attention of Earl Russell to this new aggression of British subjects upon our national rights, which involves nothing else than the issuing of the pirate from one port in the British realm, her entertainment in a provincial British port on her way to the intended scene of her operations, and her reception at another British colonial port after having committed them."

RECEPTION AT MELBOURNE.

It will help us better to understand the acts of the officials at Melbourne if we first learn how the people felt. I quote from "Cruise of the Shenandoah" by Hunt, masters' mate, p. 95, 97:

"As soon as it became generally known in Melbourne that a Confederate cruiser had arrived in the offing, a scene of excitement was inaugurated which baffles all adequate description. Crowds of people were rushing hither and thither, seeking authentic information concerning the stranger, and ere we had been an hour at anchor, a perfect fleet of boats was pulling toward us from every direction.

"As yet, however, no one was permitted to board us. It was still somewhat problematical what sort of a reception was in store for us from the authorities, and that was a question that had to be answered definitely ere we permitted our decks to be encumbered by a crowd of possible enemies under the guise of curious friends.

* * * *

"As soon as practicable, an officer was dispatched on shore to confer with the authorities, and obtain permission for our ship to remain and procure some necessary repairs. He returned before midnight, having succeeded in his mission, and the next day the Shenandoah was thrown open to the inspection of visitors."

Cruise of Shenandoah pp. 99, 100.

He then goes on to tell how they were crowded with visitors, every one of whom "was particular to mention, that he felt the warmest sympathy for the Confederate cause."

He adds:

"The *Shenandoah had came there to refit,* not to be exhibited as a curiosity, and this continual crush and whirl of visitors put an effectual check to the real business in hand; consequently, when the first excitement had in a measure subsided, we were obliged to shut our doors and hang out a most inhospitable and peremptory 'not at home' to all callers. This prohibition caused considerable heart-burnings, but necessity knows no law, and upon the whole our popularity did not suffer. * * *

"That tarry in Melbourne was one of the bright reminiscences of our adventurous cruise round the world. I do not suppose so much hospitality ever was or ever will be shown to another ship in that port, and there were few, if any, who sailed in the Shenandoah who will not carry to their graves many pleasant memories of the days they spent on the shores of Australia."

He gives this account of a reception that took place one Sunday.

Cruise, p. 104.

"More than seven thousand people passed over the railroad from Melbourne to Sandridge, *en route* for the Shenandoah that day, besides hundreds of others who came by other modes of conveyance.

"Our ship was simply *packed* (*sic*) with men and women from top to bottom the livelong day, and many were prevented by the pressure from getting on board. Indeed, so great was the curiosity excited that had we been content to stay for six months in Melbourne, and charged an admission fee of one dollar, to visitors, I believe we could have paid a large instalment upon the Confederate debt."

He further says:

Cruise, p. 109.

"Until the end of our sojourn in Australia it was one continuous fete. Every place of public amusement was not only open to us, but our presence was earnestly solicited by the managers thereof, probably because we were curiosities, and drew well. Balls, soirees, and receptions followed in such rapid succession, that the memory of one was lost in another, and, in brief, we were so persistently and continually lionized that we were in serious danger of becoming vain, and taking the glory to ourselves instead of placing it to the credit of the cause for which we labored."

U. S. CONSUL VS. COLONIAL AUTHORITIES.

For full particulars as to Shenandoah, see v. 3, p. 384 to 444; also v. 5, app. 22, p. 597 to 626.

At Melbourne the United States had a most faithful and intelligent Consul, Mr. William Blanchard. He was unceasing in the most persistent efforts to induce the Colonial Government to seize the Shenandoah, and to prevent her from being supplied with coal and from enlisting additional sailors.

Blanchard to Seward, 23 Feb., '65, v. 3, p. 384.

Mr. Blanchard writes to Mr. Seward, Melbourne, 23d February, 1865, giving a full statement of what he had done in the matter of the Shenandoah. It is impossible to read this statement and the enclosures, and not be thoroughly convinced.

1st. That Mr. Blanchard furnished the most conclusive evidence to the Colonial Government as to the illegal equipment of the Shenandoah.

2d. That he gave legal evidence to the Colonial Government that the Shenandoah was recruiting sailors.

3d. That the conduct of the English officials at Melbourne cannot be justified.

The Shenandoah arrived on the 25th January, and on the next day, Mr. Blanchard wrote as follows to Sir Charles Darling, Governor of the colony of Victoria:

Blanchard to Darling, 26 Jan 1865, v. 3, p. 393.

> "I avail myself of this opportunity to call upon your Excellency to cause the said Shenandoah, *alias* Sea King, to be seized for piratical acts, she not coming within her Majesty's neutrality proclamation—never having entered a port of the so-styled Confederate States of America, for the purpose of naturalization, and consequently not entitled to belligerent rights.
>
> "The table service, plate, &c. &c., on board said vessel bear the mark Sea King, and the Captain should bring evidence to entitle him to belligerent rights.
>
> "I therefore protest against any aid or comfort being extended to said piratical vessel in any of the ports of this colony."

Mr. Blanchard writes again the next day to Governor Darling, and the whole letter should really be quoted. As a sample I quote this extract:

Blanchard to Darling, 27 Jan 1865, v. 3. p. 394.

> "The undersigned will not doubt that, not only in the interest of justice, and the safety of universal commerce on the seas, but also in vindication of the honor and dignity of Her Majesty's Government, too long contemptuously disregarded by those, who seeking asylum under it, only abuse an honorable hospitality to violate its laws and insult its sovereignty, your Excellency will give so much weight, and no more, to a bit of bunting and a shred of gold lace as they deserve."

The next day Governor Darling answered Mr. Blanchard that he had referred his letters for the consideration and opinion of the legal advisers of Her Majesty's Government.

On 28th January, Mr. Blanchard wrote to Governor Darling again. I quote at length:

Blanchard to Darling. 28 Jan 1865, v. 3, p. 396.

"Evidence being daily accumulating in this office in support of the reasons for the protests I had the honor to forward to your Excellency, I now beg leave to call your attention specially to the following:

"1st. That the Sea King, *alias* Shenandoah, now in this port and assuming to be a war vessel, is a British built ship, and cleared from a British Port, as a merchantman, legally entering no port until her arrival here, where she assumes to be a war vessel of the so-styled Confederate States; that any transfer of said vessel at sea is in violation of the law of nations, and does not change her nationality.

"2. That inasmuch as Her Majesty's neutrality proclamation prohibits her subjects from supplying or furnishing any war material or ship to either belligerent, this vessel, having an origin as above, is not entitled to the privileges accorded to the belligerents by said proclamation.

"3. That being a British built merchant ship, she cannot be converted into a war vessel upon the high seas of the so-styled Confederate States, but only by proceeding to and sailing in such character from one of the ports of the so-styled Confederacy.

"4. That it is an established law that vessels are to be considered as under the flag of the nation where built until legally transferred to another flag.

"5. That said vessel sailed as an English merchant ship from an English port, and cannot, until legally transferred, be considered a man-of-war.

"6. That, not being legally a man-of-war, she is but a lawless pirate, dishonoring the flag under which her status is to be established and under which she destroys her victims.

"7. That her armament came also from Great Britain, in English vessels, (the Laurel and Sea King, now Shenandoah,) both of which cleared under British seal, or, if without it, in violation of established law.

"8. That, as such, she has committed great depredations upon ships belonging to citizens of the United States, making her liable to seizure and detention, and the crew guilty of piracy.

I cannot close this without further protesting, in behalf of my Government, against the aid and comfort and refuge, now being extended to the so-styled Confederate cruiser, Shenandoah, in this port."

Darling to Blanchard, 30 Jan'y, 1865, vol. 3, p. 398.

Governor Darling writes to Mr. Blanchard, 30th January, that having fully considered the representations contained in his letters of the 26th, 27th, and 28th instant, and advised with the Crown law officers thereon, he had come to the decision "that *whatever may be the previous history of the Shenan-*

doah, the Government of this colony is bound to treat her as a ship-of-war belonging to a belligerent power."

On receipt of this letter, on the same day Mr. Blanchard wrote to Governor Darling:

Blanchard to Darling, 30th Jan'y, 1865, vol. 3, p. 398.

"As consul of and on behalf and by authority of the United States of America, I hereby solemnly protest against the decision of the Government of Victoria as communicated to me in the above-mentioned dispatch. And I further protest, as consul aforesaid, against the Government of Victoria allowing the said piratical craft, Shenandoah, *alias* Sea King, to depart from this port, thus enabling her to renew her depredations upon shipping belonging to the citizens of the United States of America. *And I hereby notify your Excellency that the United States Government will claim indemnity for the damages already done to its shipping by said vessel, and also which may hereafter be committed by said vessel Shenandoah, alias Sea King, upon the shipping of the United States of America, if allowed to depart from this port;* that the said vessel is nothing more than a pirate, which the nation whose vessels she robs and destroys has a right to pursue, capture, or destroy in any port or harbor in the world."

On 6th February, Consul Blanchard went to the office of the Minister of Justice and Attorney General by appointment, taking with him a large number of affidavits, mostly of persons who had served on board the Shenandoah, establishing beyond all doubt her illegal equipment from Great Britain.

In fact she was armed when she left London.

Affidavit. Jackson, v. 3, p. 417.

Thomas Jackson swears: "That the said Sea King had on board of her when I joined her from the said Laurel, near Madeira, two mounted cannon, and that the said two mounted cannon did not come out in the said Laurel; that the said two mounted cannon were the only cannon used to make captures or prizes with while I was on board said Shenandoah; that the cannon taken from the said Laurel have never been fired since they were put on board the said Shenandoah, and I left the said Shenandoah on the 27th day of January, 1865, at the port of Melbourne."

Mr. Blanchard thus states the results of his interview with the law officer:

Blanchard to Seward, 23 Feb., 1865, v. 3, p. 385.

"After much discussion both these gentlemen seemed to admit that the Sea King (Shenandoah) would be liable to seizure and condemnation if found in British waters; but would not admit that she was liable to seizure here unless she violated the neutrality proclamation while in this port, and if she did they would take immediate action against her."

V. 3, p. 423.

Mr. Blanchard finding that he could not proceed in the Admiralty Court, continued to take what evidence he could get and forward it to the Governor in support of the protests he had made, and wrote him at length on the 15th of February, 1865, giving him a summary of facts derived from that testimony, and his views of the laws relating thereto.

This letter presents the case fully and ably. Having shown that the Shenandoah had violated the laws of Great Britain, even as laid down in the Alexandria case by all the judges, he goes on to argue that that offense can be punished at Melbourne. I shall quote from this letter fully further on.

Warde, Secretary, to Blanchard, 20 Feb'ry, 1865, vol. 3, p. 429.

In reply H. L. Warde, private secretary to the Governor, acknowledges the receipt of Mr. Blanchard's letter of the 15th, and informs him "that His Excellency is advised that it furnishes no ground for an alteration of the views respecting the presumed character of the ship Shenandoah, which have been already communicated to you."

All the efforts of Mr. Blanchard were unavailing and the Shenandoah sailed on the 18th February.

THE SHENANDOAH BEFORE THE LEGISLATURE.

Vol. 5, p. 608.

Not only was the question of the seizure of the Shenandoah considered by the Executive Department, but also by the Legislative Assembly.

Vol. 5, pp. 611 to 613.

I quote at length from the Melbourne *Argus* of 2d February, 1865, for this debate shows what was known as to the Shenandoah, and the cheers show what was desired.

"WEDNESDAY, *February* 1.

"The Speaker took the chair at half past four o'clock.

* * * * *

"*The Confederate war steamer Shenandoah.*

"Mr. BERRY, in rising to call the attention of the Government to this subject, would briefly state the object he had in view. That object was simply that no act of the Government or people of this colony should tend to complicate the relations of the mother country with a friendly nation. He did not wish to enter into the question of the rights of either of the two belligerents at all, but only to deal with the question from an English point of view—['Oh, oh']—and to see whether the proclamation made by Her Majesty in 1861 had not been grossly violated in the matter of a vessel now lying in Hobson's Bay.

"The SPEAKER called the honorable member to order. In putting a question no honorable member was allowed to state an opinion or to go beyond the mere facts of the case. [Hear, hear.] Otherwise there was no knowing what discussion might not ensue.

"Mr. BERRY intended strictly to confine himself to a mere statement of facts. He believed it would not be denied that evidence existed in this city that clearly and unmistakably showed the real name of this vessel to be the Sea King, because on that fact he founded nearly the whole of his remarks.

"An honorable MEMBER. There is no such evidence.

"Mr. BERRY continued to say that the Sea King was a vessel which sailed from London about the 8th of October last, bound for Bombay, with a cargo of coals, and all that was heard of her since, that he was aware of, was a report which reached this country in an English paper, some time back. He had found it in a Manchester paper of November 19th last, which alluded to her under the title of "the Confederate cruiser Shenandoah, late Sea King." The paper stated:

"'We received a letter yesterday from part of the crew of the Sea King. who returned to England in the African steamer Calabar. The men state that the Sea King is now called the Shenandoah.'"

"So the paper went on to allude to the men who came back after having gone out in the Laurel, and this was an important part of the facts of the case. In addition to that, he believed that within the last few days, since this vessel had arrived in Hobson's Bay, it had become a matter of public report—never denied, and stated in the public newspapers—that she was without doubt the Sea King. Besides, he had had placed personally before him still stronger evidence that such was the case. He had seen the depositions of prisoners taken out of different vessels, who stated that it was openly admitted on board, both by the captain and officers, that the original name of this particular vessel was the Sea King. In fact, the first lieutenant of the Shenandoah came out in the Sea King, while the captain and the rest of the officers came out in the Laurel, and then joined the first vessel at the Island of Madeira. The armament of the Sea King was, it seemed, brought out by the Laurel, packed in boxes, and so put on board. The position he took up was, that under the proclamation of neutrality by Her Majesty, had the Shenandoah returned to any English port after having destroyed other vessels, she would have been instantly seized and condemned, and he could see no reason why, because she had gone a much greater distance, and arrived at a colony of the British empire, that she should be treated differently. The colony was a part of the British empire, and the Government were bound to carry out the neutrality laws as if we were within the bounds of the mother country herself. It was not necessary to state any further facts on this part of her case. At all events sufficient evidence had been given to cause inquiry as to how it was that a British vessel, sailing for a peaceful voyage to Bombay, and having subsequently gone into another port, suddenly appeared in another part of the British empire after having destroyed many vessels at sea, some of them loaded with English cargo and owned by Englishmen. If that were the case it would not be necessary for him to read any portion of the proclamation on the strength of which he had now spoken. It was no doubt well known to the Government that by the second section it was not only made a misdemeanor to arm or fit out such vessels, but also to send ships out to sea with a view of handing them over, by sale or otherwise, to either of the belligerents. Such persons were not only made subject to punishment, but their ships were liable to confiscation by any officer having competent jurisdiction within the British dominions. He had stated the fact without reference to individuals. If this vessel were proved to be the Sea King—and there was abundant evidence for the Government that she was—he wished to inquire why the confiscation of the vessel was not carried out under the neutrality proclamation, leaving out the question who were the parties or their representatives indictable for misdemeanor. He doubted if he need go further. The only object he could possibly have was that the facts should be prominently and unmistakably brought under the notice of the Government. He took it that they would be anxious to enforce the spirit of this proclamation the same as at home. [Mr. Francis. 'Hear, hear.'] He would, however, point out that whatever might have been the looseness of the construction of this proclamation in the earlier stages of the war, there was no such looseness on the part of the English government now. The honorable chief secretary would bear in mind that the rams fitted out in Lairds yards were stopped by the British government, and, on the other side, the last mail brought news that certain passengers and emigrants from Liverpool to North America were also stopped under the first clause of this proclamation, which prevented enlistment for either of the belligerents. The fact of the British government enforcing this proclamation so strictly supplied important additional reasons why every attention and care should be given to the subject here. It must be within the knowledge and memory of the honorable chief secretary that all the vessels destroyed on such a cruise as that of the vessel now in Hobson's Bay would at some future time be claimed by the American Government from the British government. Here was this vessel. She had touched at no port, and no one could tell whether or not she had authority from the Confederate government, because there was no authority here to test the validity of a Confederate commission. It must be clear to any mind that the parties in possession of this vessel were on the horns of a dilemma. If she were the Sea King—

"The SPEAKER. The honorable member is not in order.

"Mr. BERRY would only say that if she were the Sea King, on her voyage to Bombay, as the declaration stated, she might have been seized against the will of her owners, and so converted into a pirate. If so, she was subject to be dealt with as having been taken against the will of her owners. If she could not be dealt with as a pirate, the owners were on the other horn of the dilemma, inasmuch as she had committed a breach of the second clause of the proclamation to which he had alluded, and should be on that ground confiscated by the Government. Having brought this matter forward, he should conclude by saying that he was quite sure there was abundance of evidence to prove that the vessel in question was the Sea King, and ask the honorable chief secretary, pursuant to notice, whether the Government intended to take steps to confiscate this vessel and to punish the officers for a misdemeanor in accordance with the provisions of the proclamation alluded to?

"Mr. M'CULLOCH, in reply, had no hesitation in saying that this question was a most important one, and should be dealt with in a most cautious manner. [Hear, hear.] Under all the circumstances of the case it would be well if, at this present time, the House did not go as fully into the discussion of the various matters and alleged facts respecting this ship as would be required in the Imperial Parliament. The honorable member had stated that this vessel was the Sea King, but what proof had he? [Cries of 'Hear, hear,' from all parts of the House.] There were the newspaper reports and a letter addressed to a newspaper in Manchester that the Shenandoah was the Sea King, but the honorable member had not brought forward one single particle of proof to substantiate anything that went beyond that. [Hear, hear.] He said reports were going abroad in this city, and he (Mr. M'Culloch) had heard it stated that the remains of the words 'Sea King' were to be seen on the sides of the ship, but was that any evidence of the transfer which it was said had taken place? [Hear, hear.] And even if such were the case, it was a question if the Government could deal with the ship as a pirate. ['Hear, hear,' and cheers.] The government had done a great deal in discussing this question. For the last week they had given a considerable amount of attention to it, desiring to observe as strictly as possible the rules laid down for the guidance of this and all other colonial governments. In dealing with this vessel they had not only to consider the terms of the proclamation referred to, but also the confidential instructions from the home government; and, moreover, they had had brought before them the case of a vessel in exactly the same position as the Shenandoah. All the circumstances which occurred, with regard to this other vessel were in the possession of the government and would be weighed in connection with the present matter, but he believed the government would not be at all justified in treating this vessel as a pirate. [Cheers.] While insisting as a matter of course that strict neutrality should be maintained as far as possible, he would observe that the vessel had only been allowed to remain in port so long as was necessary for taking on board the supplies necessary for the support of her crew and to complete repairs which were necessary to allow the ship to go to sea. Beyond this the government would not move in the matter. ['Hear, hear,' and cheers.]

"Mr. Berry, before the discussion closed, wished to say that he had omitted a good deal of what might be brought forward, being in expectation that his statement would not have been denied. He would like, to make his case complete, to read, for the information of the chief secretary, a deposition given in his presence that day by one of the passengers, a lady, taken by this vessel. [Cries of 'Order,' and 'No, no.'] If the matter was of the importance stated, any information given to the government ought to be freely availed of by them. It was only a short deposition, and would not take long to read.

"Mr. Higinbotham objected to the course now taken. This was not the proper place or time [cheers] for the honorable member to read a document that might, perhaps, provoke discussion as to its value and effect. If it was considered at all, it should be considered by the government in private.

"Mr. O'Shanassy wished, on the point of order, to speak to the statement made that this vessel was taken by force at sea, and against the consent of the owners.

"Mr. Berry. I did not say so.

"Mr. O'Shanassy would, however, point out that, in that case, the owners would have applied to the British Government, who were the proper authorities, and not the colonial government. If this vessel were not taken by force, but sold, then the charge of piracy fell to the ground. He (Mr. O'Shanassy) concurred in what had fallen from the honorable attorney general, that an *ex parte* statement ought not to be received in that House. It was only fair to all parties that no favor should be shown either on one side or the other. What did the French Government do in respect to the Alabama? They gave her permission several times to refit, and the Florida remained in one of her ports for months. Why, then, should this colony refuse to do to a vessel that came here that which other powers were willing to do, and this with experience to guide them? *The honorable member might as well have let this matter alone.* [*Cheers from all parts of the house.*]

"Mr. Lalor said it struck him that the House was wrong to discuss the matter. His Excellency the Governor was the representative of Her Majesty, and he alone had full powers to deal with this matter. [Hear, hear.] He (Mr. Lalor) did not know the law of the case, but believed the Governor alone could deal with a vessel belonging to a foreign power. He protested against a discussion which was unfair to all parties, and might compel honorable members to take sides. He hoped the matter would not be pressed further, unless full notice was given, and then both sides could be heard. *At the same time he might mention that he took a view altogether opposed to that of the honorable member for Collingwood.* [*Cheers.*]

"The matter then dropped."

See Herald report, vol. 5, p 613.

The whole history of the Shenandoah was a matter of public notoriety at Melbourne. The Melbourne *Herald* of 27th January, printed the next day after the arrival of the Shenandoah, and five days before this debate, contained a full and particular statement as to the Shenandoah from the time she left London as the Sea King till her arrival at Melbourne, and all this obtained after "a personal visit to the vessel."

In his issue of February 23d, several days after the Shenandoah had gone, the editor of the *Argus* wrote:

Vol. 3, p. 439.

"Hitherto the only public expression of ill feeling emanated from Mr. Berry, a member of the lower house of legislature. In his place in the Legislative Assembly, he called the attention of the Government to the subject, stating that the Shenandoah, being in reality the Sea King and an English vessel, should be seized under the neutrality proclamation. In reply, the chief secretary pointed out that there was nothing which could be accepted as proof of the honorable member's assumption, and Mr. Berry received an unmistakable snubbing at the hands of several other members of the house, including Mr. O'Shanassy, whose remark that Mr. Berry might as well have left the matter alone was cheered in all parts of the house."

REFITTING.

The Shenandoah had experienced rough weather off Cape of Good Hope and when she arrived at Melbourne was in need of repairs, and "had come there to refit," but she was still able to steam up the bay at the rate of nine knots an hour.

We have seen (*ante*, p. 114.) that Waddell was somewhat doubtful whether he would be allowed to repair at Melbourne, but he was unofficially notified that he could do so, on the day of his arrival.

The official correspondence gives more particulars.

On the day of her arrival, 25th January, Commander Waddell wrote Governor Darling, as follows:

Waddell to Darling, 25 January, 1865, vol. 5, p. 598.

"I have the honor to announce to your Excellency the arrival of the Confederate States steamer Shenandoah, under my command, in Port Phillip, this afternoon, and also to communicate that the steamer's machinery requires repairs, and that I am in want of coals.

"I desire your Excellency to grant permission that I may make the necessary repairs and obtain the supply of coals to enable me to get to sea as quickly as possible."

Next day Waddell has this reply from Hon. Mr. Francis, Commissioner of Trade and Customs:

Francis to Waddell, 26 Jan'y, 1865, v. 5, p. 599.

"In reply, I have received the instructions of Sir Charles Darling (*sic.*) to state that he is willing to allow the necessary repairs to the Shenandoah and the coaling of the vessel to be at once proceeded with, and that the necessary instructions have been given accordingly. * * * *

"I am to request that you will be good enough at your earliest convenience to intimate to me for the information of His Excellency, the nature and extent of your requirements, as regards repairs and supplies, in order that Sir Charles Darling (*sic.*) may be enabled to judge of the time which it may be necessary for the vessel under your command to remain in this port."

Note that he only asks as to repairs that he may know *how long* she is to remain.

On 28th January Waddell gives his own opinion of repairs needed:

Waddell to Francis, 28 Jan., 1865, vol 5, p 599.

"From what I have seen of the propeller shaft and the verbal report of the diver on the bracings under water, I can state that the composition castings of the propeller shaft are entirely gone, and the bracings under water in the same condition. * *

"The other repairs are progressing rapidly. I fear the damages will prove more serious than I anticipated them to be at first."

On 30th January Waddell transmits a report made by Langlands Bros. & Co., ship-builders, as follows:

Langlands Bros. to Waddell, 30 Jan., 1865, vol 5, p 600.

"At your request we beg to report that it will be absolutely necessary to put the Shenandoah on the Government slip, as, after inspection by the diver, he reports that the lining of outer stern back is entirely gone, and will have to be replaced.

"As to the time required, (as three days will elapse before she is slipped,) we will not be able to accomplish the repairs within ten days from date."

On 1st February Waddell writes to Commissioner Francis:

Waddell to Francis, 1 Feb., 1865, vol 5, p 601.

"I am extremely anxious to get the Shenandoah to sea. The procrastination by the parties employed under his Excellency the Governor's permission for the necessary repairs to this ship seems to me unnecessary; and if *I appeal to his Excellency the Governor for instructions to those employed to hurry up the work on this ship. I hope his Excellency the Governor will see in it the spirit of a law-abiding man, and one impatient to be about his country's business.*"

Whose country's business had the Governor already given instructions to hurry up?

On the same day the Governor sends him word that the Government patent slip may be of use "to hurry up the work," and here is an extract from the letter received by Waddell:

Francis to Waddell, 1 Feb., 1865, vol. 5, p 601.

"From the tenor of this communication it is evidently necessary that your ship should be placed upon the patent slip for further examination and repairs, and I presume that you will, therefore, proceed promptly with the necessary arrangements. For your information I may state that the slip termed the Government patent slip in the communication to yourself from Messrs. Langlands Bros. & Co. is not in possession of or under the control of the authorities. It was originally built by this Government, but for many years has been leased to various parties, and your arrangements must, therefore, be made with the present lessees."

It was not till the 30th January, (see *ante*, p. 117,) that the Governor, representing that he had taken several days to consult *Crown law officers*, informed Mr. Blanchard that the Government *was bound* to treat the Shenandoah as a ship of war belonging to a belligerent. Compare this delay to answer Mr. Blanchard with the haste even by unofficial means to hurry up the work on the Shenandoah during these same days, that Waddell might "be about his country's business." And note that all this took place while the Government had not yet informed Mr. Blanchard of its answer to his protest that the Shenandoah should not be received at Melbourne, but should be seized for a clear violation of law.

So the Shenandoah went upon the Government slip, and was fitted again by Englishmen to destroy United States commerce.

This is what her master's mate writes:

Shenandoah's cruise, pp. 104 and 111.

"It was imperative to proceed with our refitting. A gang of caulkers were procured, and went to work upon our decks with pitch and oakum, and preparations were hurried forward to remove from the ship her stores and such ponderous furniture as could be readily gotten out to lessen her draft preparatory to placing her upon the slip, where her propeller could be inspected.

"A couple of lighters were hauled alongside, and into them were hoisted such articles as we desired to be rid of for the present, and this accomplished, we proceeded to the slip, where we remained for ten days, though the work was expedited as rapidly as possible, alternate gangs of men working day and night."

* * * * * *

"Our repairs were at length effected, and by the aid of a steam tug, we left the slip amid the cheers of quite a concourse who had assembled to see us off, and ships were saluting in every direction as we moved along toward our former anchorage."

The Melbourne *Argus* of 20th February, says:

"Messrs. Langlands & Co. made 'a good job' of their repairs, and the ship has *consequently* considerable speed."

The sailor, Temple, swears:

Affidavit of Temple, v. 3, p. 481.

"Every facility was afforded to us, both by the officials and people of Melbourne, to make our repairs and to procure our supplies; indeed, everything we wanted." * * *

"The English Government engineer was on board our ship while we were undergoing our repairs three or four times a day, and certainly assisted them with his opinions and advice, if he did not superintend our repairs."

COALING.

We have seen that permission was given on the day after her arrival for the Shenandoah to be supplied with coal.

After she had been repaired at the Government slip, and taken other supplies at Melbourne, she began taking in coal, and on 17th February, 1865, Mr. Blanchard wrote to the Governor, Sir C. Darling, as follows:

Coal. Blanchard to Darling, 17 Feb., '65, vol 3, p 425.

"Sir,—I received information yesterday from Mr. J. McFarlane, emigration officer, in reply to an inquiry, that the Shenandoah was taking in three hundred tons of coal, in addition to the quantity she had on board when she came into this port, which I learn was about four hundred tons, from a ship then alongside of her in the bay.

"The Shenandoah is a full-rigged sailing vessel—steam is only auxiliary with her; and I cannot believe your Excellency is aware of the large amount of coal now being furnished said vessel."

The same day Mr. Blanchard received this letter from the Private Secretary of the Governor:

Warde to Blanchard. 17 Feb. '65, vol 3, p 428.

"Sir,—I am desired by his Excellency the Governor to acknowledge the receipt of your letter of this date, and to acquaint you, in reply, that a ship of war of either belligerent is, under Her Majesty's instructions, allowed to take in coal sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination."

The next day the Shenandoah sailed with coal enough to carry her up into the North Pacific, among the ice and the whalers, and back again to Liverpool, without again going into port.

Affidavit of Temple, 6 Dec., 1865, vol. 3, p 477 to 481.

"Before we left Melbourne we were coaled by the ship John Fraser, from Liverpool, which I have since learnt was sent out with coal expressly for us." So swears Temple, one of the crew.

Hunt, the master's mate, says:

Cruise of Shenandoah p. 111.

"We hauled alongside the John Frazer, a merchant ship from Liverpool, and took in three hundred tons of coal, which, with the four hundred we already had on board, gave us an ample supply for our contemplated cruise."

WADDELL INCREASES HIS CREW.

When the Shenandoah arrived at Melbourne her crew was, in a great part made up from men that had been impressed from the crews of the ships she had burned. These men nearly all deserted at Melbourne and sought the protection of the American consul.

It was, therefore, necessary that the Shenandoah should procure more sailors.

As soon as Mr. Blanchard learned that attempts were being made to enlist men on board the Shenandoah, on the 10th February, he wrote Governor Darling transmitting the affidavit of one Williams who had served as cook on board the Shenandoah, to this effect:

Blanchard to Darling, 10th Feb., 1865, vol. 3, p. 414.

"When I left the Shenandoah on Monday last there were from fifteen to twenty men concealed in different parts of the ship, who came on board since she arrived at Hobson's Bay, and said men told me that they had come on board to join the ship. I cooked for said concealed men for several days before I left. Three other men, in the uniform of the crew of the Shenandoah, are at work on board, two of them in the galley and one of them in the engine room. Three other men in uniform joined said Shenandoah since she came in this port. I can point out all the men who have joined said Shenandoah since she came in this port."

Affidavits Cushman, Lydseiff & Forbes, v. 3, pp. 426, 427.

On the 13th February, Williams and other witnesses appeared before the crown solicitor and testified in effect that to their knowledge a number of men had been received on board the Shenandoah, and though concealed part of the time, yet received rations cooked and served the same as for the regular crew.

Mr. Blanchard sent copies of these affidavits to Governor Darling on 10th, 13th and 14th of February.

On account of the information given them by Mr. Blanchard, the Government appear to have taken some steps to prevent the enlistment of men on board the Shenandoah, and on 13th or 14th February a warrant was issued for the arrest of one "Charley" and others who appeared from sworn information to have enlisted on the Shenandoah since her arrival at Melbourne.

Waddell prevented the execution of this warrant by refusing to allow the vessel to be searched. She was at this time in the slip.

When on 14th February, this refusal became known to the governor he directed Mr. Francis to write to Waddell in part, as follows:

Francis to Waddell, 14 Feb. 1865, v. 5, p. 603.

"You are appealed to to reconsider your determination; and pending further information from you, which you are requested to make with as little delay as possible, the permission granted you to repair and take supplies is suspended, and Her Majesty's subjects have been duly warned accordingly."

In consequence of this decision of the Government to stop repairs on the Shenandoah this telegram was sent from Mr. F. C. Standish, chief commissioner of Victorian police, to Mr. Beaver, police inspector stationed at Williamstown:

Telegram, v. 5, p. 604.

"I have to direct that you communicate with Mr. Chambers the lessee of the patent slip, that the governor in council has given directions that he and all other British subjects in this colony at once desist from rendering any aid, assistance, or perform any work in respect to the aforesaid Confederate ship Shenandoah, or in launching same. You will at once proceed with the whole of the police at your disposal to the patent slip, and prevent, at all risks, the launch of the said ship. Superintendent Lyttleton and fifty men, also fifty of the military, proceed at once to Williamstown, telegraphing anything that may occur direct to me."

This order prevented the launching of the ship that day.

"THE RICHMOND GOVERNMENT" ALL POWERFUL.

On the same day Waddell replied to the Governor's letter protesting against the seizure; he said:

Waddell to Francis, 14 Feb 1865 v. 5, p. 603.

"I have to inform his Excellency the Governor that the execution of the warrant was not refused, as no such person as the one therein specified was on board, but permission to 'search' this ship was refused. According to all the laws of nations, the deck of a vessel of war is considered to represent the majesty of the country whose flag she flies, and she is free from all executions, except from crimes actually committed on shore, when a demand must be made for the delivery of such person, and the execution of the warrant performed by the police of the ship. Our shipping articles have been shown to the superintendent of police. All strangers have been sent out of the ship, and two commissioned officers were ordered to search if any such have been left on board. They have reported to me that, after making a through search, they can find no person on board except those who entered this port as part of the complement of men.

"I therefore, as commander of the ship representing my Government in British waters, have to inform His Excellency that there are no persons on board this ship except those whose names are on my shipping articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port; nor have I in any way violated the neutrality of the port.

"And I, in the name of the government of the Confederate States of America, hereby enter my solemn protest against any obstruction which may cause the detension of this vessel in this port."

On the next day hearing that the launching had been prevented, Waddell wrote the Governor: "I therefore respectfully beg to be informed if this seizure is known to His Excellency, the Governor, and if it meets his approval."

On the same day the Governor backed down and this letter was written to Waddell in reply:

Francis to Waddell, 15 Feb. 1865, v. 5, p. 604.

> "I am instructed by His Excellency the Governor to inform you that the lessee of the patent slip having reported that the safety of the ship Shenandoah may be endangered by her present position on the slip, the suspension of permission to British subjects to assist in launching the ship is withdrawn."

On the same day by the direction of the Governor, another letter was written to Waddell saying that the Government had not directed or authorized the seizure of the Shenandoah, but only that she should be prevented from making further repair and taking in additional supplies.

During the time that the police were guarding the vessel, while Waddell was writing to the Governor that "Charley" was not on board, the man "Charley" and three other men came down the gangway and sought to escape in a boat, but were identified as men who had been concealed on board. It was therefore very evident that Waddell in his letter of the 14th had tried to deceive the Governor. Nevertheless the Governor allowed the repairs to go on.

How delicately he told Waddell that he lied, and that the foreign enlistment act was in course of being evaded and for what insufficient reasons the Governor allowed the repairs to go on under such circumstances appears from this extract of the letter last noted:

Francis to Waddell, 15 Feb., 1865, v. 5, p. 605.

> "In addition to evidence previously in possession of this Government, it has been reported by the police that at about ten o'clock last night four men, who had been in concealment on board the Shenandoah, left the ship, and were arrested immediately after so leaving by the water police.

"It appears from the statements of the men that they were on board your vessel both on Monday and Tuesday, the 13th and 14th instants, when their presence was denied by the commanding officer in charge, and by yourself subsequently, when you declared that there were 'no persons on board this ship except those whose names are on our shipping articles.' This assertion must necessarily have been made by you without having ascertained for yourself by a search that such men were not on board, while at the time you refused permission to the officer charged with the execution of the warrant to carry it into effect.

" Referring to that portion of your communication of the 14th instant, in which you inform His Excellency, the Governor, " that the execution of the warrant was not refused, as no such person as the one therein specified was on board, I am in a position to state that one of the four men previously alluded to is ascertained to be the person named in the warrant.

" I am also to observe that, while at the moment of the dispatch of your letter it may be true that these men were not on board the Shenandoah, it is beyond question that they were on board at the time it was indited, your letter having been dispatched at five minutes before ten o'clock.

"It thus appears plain as a matter of fact, that the Foreign Enlistment Act was in course of being evaded.

" Nevertheless, as the only person for whose arrest a warrant was issued, has been secured, and as you are now in a position to say, as commanding officer of the ship, and on behalf of your Government, whose faith is pledged by the assurance that there are no persons on board this ship except those whose names are on our shipping articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port,' His Excellency, the Governor has been pleased to revoke the directions issued yesterday, suspending permission to British subjects to aid and assist you in effecting the necessary repairs and taking in supplies."

The next day, 16th February, Waddell replied, thanking the Governor for his " observance of the rights of belligerents;" and adding: " In conclusion, sir, allow me to inform you that I consider the tone of your letter remarkably disrespectful, and insulting to the Government I have the honor to represent; and that *I shall take an early opportunity of forwarding it to the Richmond Government.*"

The masters' mate, Hunt, gives this account of the attempt to execute the warrant and of the Governor's fright, lest he should be reported to the Richmond Government:

Cruise of Shenandoah, p. 105. "His Excellency dispatched a force of about one hundred armed men, about half of whom belonged to the regular city police, and the rest were of the Royal Artillery, to enforce his order, but it is much easier to direct a party of land lubbers to seize an armed vessel than for them to execute the mandate.

"Captain Waddell peremptorily refused to permit his ship to be searched, or one of the Governor's men to come on board.

"He also wrote to the Governor informing him that if the ship was not released within twenty-four hours he should pay off his crew, return to England with his officers and report the outrage to his own and the English government.

"An Officer was dispatched with this missive which had the desired effect.

"The following day, the police and artillery were withdrawn, and we were formally notified that we were at liberty to proceed to sea whenever we desired."

We have seen under what circumstances the Governor was on 15th February induced to allow the repairs to go on, although it was evident that the Foreign Enlistment Act was being violated. We now come to consider how it happened that on the 18th the Shenandoah sailed with nearly forty English subjects who had come on board at Melbourne for the first time, and who served as sailors and officers till that vessel returned to Liverpool.

There was no doubt as to the fact that "Charley" and his companions had violated the law, for on the 16th these men were brought up before a magistrate, and "Charley" and two other of the prisoners were committed for trial.

There was no doubt that their enlistment was known to the Government and that they considered it a violation of a strict neutrality, for in the Assembly on the 15th, the Chief Secretary said, speaking of "Charley" and the other persons arrested:

Vol. 5, p. 669. "On examination, we find that those parties were not on board when the ship came into the port, but joined here. They were persons who ought not to have been allowed to join, and who ought not to have been concealed. We have now discovered that one of those four persons who left the ship at 10 o'clock last night, or about the time the letter was dispatched was the very man Charley for whom the warrant was issued. I think the course the Government has taken will justify us, not only in the estimation of the house, but I am sure it will be admitted the Government has taken the proper course to carry out and support the intention of the British parliament in respect to the Foreign Enlistment Act, and the intention of the proclamation of Her Majesty with respect to the observance of neutrality.

"*There is no doubt that this man 'Charley,' for whom the warrant was obtained and of whom we were assured that he was not on board was in the uniform of the ship on various occasions, at all events. Now it appears to me and to the Government that if anything can be a violation of strict neutrality, this is it.*"

There was no doubt but that the Shenandoah was about to sail for on the 14th Waddell had written that he should "proceed to sea by the 19th unless prevented by some unforeseen accident."

If the Solicitor-General had not wanted his dinner rather than to hear clear evidence that the Shenandoah was violating the Foreign Enlistment Act, "some unforseen accident" might have prevented the sailing.

"MY DINNER" VS. U. S. CONSUL.

Waddell having got his ship launched as we have seen, proceeded at once to coal her and then made his arrangements to increase his crew, but information of the same came to Mr. Blanchard, as follows:

On the 17th February, at about 5 o'clock p. m., one Andrew Forbes came running quite out of breath to the United States Consul's office and made a statement that was put in the following affidavit:

Vol. 3, p. 427.

"That at about four o'clock this day, while on the railway pier at Sandridge, I saw Thomas Evans, Robert Dunning, Charles Bird, William Green and little Sam, all inhabitants of Williamstown, most if not all of them British subjects, standing on the pier, dressed better than usual; that I said to Thomas Evans, 'What are you all doing over here?' that after some further conversation said Thomas Evans said: 'I suppose I need not be frightened to tell you;' said Evans then told me he was going on board the bark Maria Ross, (then lying in the bay ready for sea,) with the others in his company, to join the Shenandoah, when said Shenandoah got outside the Heads; that the boats from the Maria Ross were to come to take them on board at five o'clock. He said also that there were many more besides his party going the same way."

What Mr. Blanchard did in the matter appears from his letter to Governor Darling, written the next day, February 18th, inclosing a copy of the affidavit of Forbes, he said:

Blanchard to Darling, 18 Feb. '65, vol. 3, p 428.

"Mr. Forbes came to my office at about 5 o'clock, p. m. yesterday. Seeing the necessity of immediate action in the matter, I took him at once to the Crown Law Offices to lay information before the Crown Solicitor, where I had previously been directed in a communication from the office of the Attorney General, of February 11, 1865, to take a witness.

"It is with regret that I have to call your Excellency's attention to the fact that while there, in my official capacity, I was most grossly insulted, by language and manner, by Mr. Gurner, Crown Solicitor, who positively refused to receive the information I was prepared to lay before that Department of the Crown. In consequence of which I conceive the ends of justice have been defeated and the neutrality of this port violated.

"It is hardly necessary to acquaint you that I deem it my duty to send to my Government a copy of this dispatch."

To give more particulars of this interview between the United States Consul offering evidence that men were about to violate the law by shipping on board the Shenandoah and the crown solicitor whose duty it was to receive the same, I extract from the letter of Samuel P. Lord to Mr. Blanchard, dated 20th February, 1865. Mr. Lord aided Mr. Blanchard in the matter.

Lord to Blanchard. 20 Feb., '65, vol. 3, p. 429.

"When I introduced you as the United States Consul to Mr. Gurner, the Crown Solicitor, he, without noticing or acknowledging you, said very tartly that he was going to his dinner, and could not be detained; when you replied, 'I come as the representative of the United States with evidence to lay before you, the Crown Solicitor, of a large number of men about violating the neutrality laws of the country;' at which he replied, in a sneering and most insulting manner, 'I don't care; I want my dinner, and am going to have it; there are plenty of magistrates round town; go to them;' when I, seeing you felt bitterly the insulting manner of Mr. Gurner, and wishing to spare you a continuation of it, said, 'Let us then go and see the Attorney General.' Mr. Gurner turned his back on us and walked off. When outside the gate and about a dozen paces down Collins street he turned and hallooed out, 'My dinner, my dinner, Lord, that is what I want.'"

When Mr. Blanchard called upon Mr. Gurner on Friday afternoon, 17th February, he knew that the Shenandoah was to sail the next morning, and he was particularly anxious that the Government should act immediately upon the information of Forbes. How persistently and determinedly he worked to this end, and how and why he failed, and how clearly Great Britain is liable for the enlistment on board the Shenandoah that night, appears from his own story. Speaking of the statement given him by Forbes on the afternoon of 17th February, he says:

Blanchard to Seward, 25 Feb 1865. v. 3, p. 384.

"Deeming the information important, and that no time was to be lost, I, in company with Mr. S. P. Lord, who was then in the consulate, took said Forbes with us to the crown law officer to lodge the information, and was met by the crown solicitor coming out. Upon my application to take the information he, in an offensive manner, positively declined, saying he wanted his dinner; that there were plenty of magistrates in town; that it was none of his business. He informed me that the Attorney General and Minister of Justice were in Parliament then in session. And then proceeded to the detective police office and there was informed that if the affidavit of the man was taken before a county magistrate they would execute his warrant. I then went to Parliament House and called out Mr. Higginbotham, the Attorney General, who said that if I would go to Mr. Sturt, he would take the affidavit. I then went with the witness to Mr. Sturt, more than a mile off who declined to take it, and who said the water police were the proper authorities to act. The water police are at Williamstown across the bay and about four miles from Mr. Sturt's. I then took the testimony which is No. 43, at my office, and dispatched it by Mr. Lord to the Attorney General, and started with the witness to Williamstown. When the witness found he had to go among his acquaintances he was afraid of bodily harm, and refused to proceed.

"During the night several persons endeavored to find me to give information of the shipment of men for said vessel. One Robbins, a master stevedore, found me at 11 o'clock p. m., and informed me that boat loads of men with their baggage were leaving the wharf at Sandridge, and going directly on said vessel, and that the ordinary police boats were not to be seen on the bay. I informed said Robbins that Mr. Sturt, police magistrate, told me the water police were the proper persons to lodge any information with, and that he, as a good subject, was bound to inform them of any violation of law that came under his notice, which he promised to do.

"On the morning of the 18th of February, at about 7 o'clock, a. m., the said Shenandoah left her anchorage, and proceeded to sea unmolested."

FORBES STATEMENT WAS TRUE.

I quote from the Melbourne papers of Monday, the first papers published after her sailing.

These extracts show what was generally known at Melbourne of the enlistment of men.

Vol. 3, p. 435. "*Herald.*" "Several rumors are afloat that the *Shenandoah shipped or received on board somewhere about eighty men just prior to leaving.* We have since been informed that she took away a large number but not equal to that above stated."

The *Agus* has the following:

Vol. 3, p. 436. "It is not to be denied, however, that *during Friday night* a large number of men found their way on board the Shenandoah, and did not return on shore again."

The *Age* says:

Vol. 3, p. 436. "It is currently reported she shipped some eighty men *just prior to leaving.*"

The affidavit of William A. Temple shows what did take place. He was a sailor on board the Shenandoah from the time she left London till her return to Liverpool, and in a very complete affidavit gives a narrative of what occurred during that time. He says:

Affidavit of Temple 6 Dec. 1865, v. 3, p. 477 to 486. "We left Melbourne on the 18th day of February. When we left we had from fifty to sixty persons on board as stowaways; among them was Captain Robert Blackar, who commanded the English steamer Saxonia. It was known to the officers on board at the time we sailed that most of these men were on board. All these persons so stowed away on board were British subjects, and were enlisted or enrolled upon the ship's books as officers or men within twelve hours from the time we left our anchorage, and while we were within sight of land. Their names are mentioned in the list annexed hereto, and comprise all those set down in said list as shipping at Melbourne."

Hunt, the Master's mate, pretends that the finding of these men on board was a surprise, and says:

Cruise of Shenandoah p. 113.

"Our ship's company had received a mysterious addition of forty-five men, we really needed their assistance and as they had come through no contrivance of ours, we determined to consider it providential and they were all enlisted. A few who were not seamen we made available as marines. Good men and true they proved, and very useful before our cruise was ended."

List, v. 3, p, 487.

From the list of the officers and men of the ship Shenandoah, annexed to Temple's affidavit, we find, that forty-two men were in all enlisted at Melbourne; eight petty officers, twenty seamen, seven firemen, and three marines, and further that *Robert Dunning, an Englishman, Thomas Evans, a Welchman, and William Green, an Englishman, three of the four men who told Andrew Forbes on February 17th, that they so proposed to enlist, were among the number.*

Be it remembered then, that on February 17th the United States Consul wrote to Governor Darling, transmitting affidavits, and adding:

Blanchard to Darling, 17 Feb.,'65, vol 3, p 427.

"I am compelled to protest against said vessel (Shenandoah) being allowed to depart with men furnished her in this port, whether the men are British subjects or others."

That on the same afternoon Robert Dunning, Thomas Evans and William Green told Andrew Forbes that they were going to ship on board the Shenandoah that night or next morning, and that there were many more going the same way.

That Forbes communicated this testimony to Mr. Blanchard, the United States Consul.

That Mr. Blanchard, in company with Forbes and one Lord, took a carriage and at once drove to the Crown Law Office, and said to Mr. Gurner, the Crown Solicitor, "I come as the representative of the United States, with evidence to lay before you, as Crown Solicitor, of a large number of men about violating the neutrality laws of the country;" and that Mr. Gurner replied, in a sneering and most insulting manner, "I don't care, I want my dinner, and am going to have it."

That afterwards Mr. Blanchard did visit various other Government officers and demand action, but that they did nothing.

That Evans, Dunning and Green, and "many more besides," did enlist on the Shenandoah that night.

That thirty-six out of the forty-two men enlisted at Melbourne were citizens of Great Britain.

That these men afterwards assisted at the capture and burning of about thirty United States whalers.

Affidavit of Temple, vol. 3, p. 488.

Correspondence, vol. 3, p. 494--505.

That on their arrival at Liverpool they were all mustered to one side of the vessel, and asked by Captain Paynter, an English officer, "What countrymen are you?" and that all the English, Scotch and Irish answered that they were Southerners, and that the other foreigners answered according to their nation, and that all were then set at liberty.

Six years after these transactions, the words of Mr. Blanchard are as applicable as when written:

Blanchard to Seward, 23 Feb., 1865, vol. 3, pp. 384, 390.

"What motives may have prompted the authorities, with evidence in their possession as to the shipment of large numbers of persons on board said vessel, substantiated by the capture and commitment of some escaping from said ship, to allow the said vessel to continue to enjoy the privileges of neutrality in coaling, provisioning, and departing, with the affidavits and information lodged and not fully satisfied, I am at a loss to conceive. Was it not shown and proved that the neutrality was violated? And yet she was allowed to go her own way unmolested, thus enabling her to renew her violations of neutrality on a larger scale.

"There are eyes that do not see and ears that do not hear, and I fear that this port is endowed with such a portion of them as may be required to suit the occasion; for in what other way can my unsuccessful attempts to obtain the assistance of the authorities on the evening of the 17th instant be explained?

"The immunities that I enjoyed on this occasion, as United States Consul, were of a peculiar nature. Instead of being assisted by the authorities, I was only baffled and taught how certain proceedings could not be instituted."

The Government at Melbourne allowed the Shenandoah to complete her repairs and to coal after it was conclusively established that that vessel was violating the law.

The Crown Solicitor wanted his dinner and he ate it, positive testimony of Forbes was not listened to and British subjects were added to the fighting power of the Shenandoah.

The cost of that dinner has not yet, but must at some time be paid for, and that cost is not small.

SHENANDOAH IN THE NORTH PACIFIC.

After the Shenandoah left Melbourne she went up into the North Pacific and captured about thirty whaling vessels, and continued to do so after the war was over.

HER LAST DAY'S BURNINGS.

Cruise, 195.

It may not be out of place to quote (from the cruise of the Shenandoah) Hunt's account of her last day's burnings:

"On the 27th of June, we let our fires go down, lowering our smoke stack and commenced beating to the northward under sail. Five ships were in sight, tacking about, little thinking what a dangerous foe was in their vicinity. The weather was cold and foggy, with a good breeze blowing, consequently we made no dash at the fleet, as a part of them would undoubtedly succeed in escaping while we were dealing with the rest. We preferred to wait for a calm when we could swoop down upon them and secure the whole.

"The morning of the 28th opened with very little wind and a clear sky.

* * *

"At 8 o'clock we commenced what proved to be our last day's warfare against the commerce of the United States, by starting in chase, under steam, of the sail we sighted a little way to the southward.

"At 10 o'clock we captured the bark Waverly, of New Bedford, with five hundred barrels of oil. Her officers and crew were at once sent on board the Shenandoah, after which she was set on fire, and we steered off to the westward until 12 o'clock, and then shaped our course to the northward, passing through an extensive field of ice, and at half past one, neared a fleet of ten ships at the entrance of Berhing's straits.

"For the purpose of deceiving them we hoisted the United States flag, though there was not a breath of wind at the time and not a shadow of a chance for any one of them to escape. It seemed as though the fates had interposed to render our last achievement the most imposing and brilliant of the cruise, if not of the war.

"One ship, the Brunswick, from New Bedford, had been stove and now flew signals of distress. Under these circumstances it is the custom of whalers to collect all the vessels of the fleet within signalling distance, and, if the craft is found so badly injured that it is impossible to repair her, an auction is improvised and she is sold to the highest bidder.

"It was for such a purpose that the whaling fleet at Berhing's straits had assembled on that 28th of June, 1865, ill-omened day for them and the insurance officers of New Bedford.

"Seeing our vessel standing in with the United States flag at her peak, a boat came off from the disabled Brunswick, to ascertain if our Captain could lend them a carpenter or two, and render any other assistance that might be required.

"We received the delegation with grave faces and informed them that their wants should all be attended to in due time. Our boats were then made ready for lowering, and officers and men were detailed to board the whalers and bring off their Captains and mates. When all was ready, the boats started from our ship with one accord, the United States ensign was hauled down, the Confederate run up in its place, and the blank cartridge fired towards the center of the fleet.

"All now was consternation. On every deck we could see excited groups were gathering, gazing anxiously at the perfidious stranger and then glancing wistfully aloft where their sails hung idly in the still air. But look where they would there was no avenue of escape. The wind, so long their faithful coadjutor had turned traitor and left them like stranded whales, to the mercy of the first enemy. * * * *

"By five o'clock we had made prizes of the whole fleet, ten sail in all."

Two of them were ransomed as transports for the prisoners, the remainder of the captured vessels were set on fire.

He continues:

"We hauled off to a little distance and anchored, with a Kedge to watch the mighty conflagration our hands had lighted.

"It was a scene never to be forgotten by any one who beheld it, the red glare from the eight burning vessels shone far and wide over the drifting ice of those savage seas; the cracking of the fire as it made its devouring way through each doomed ship fell on the still air like upbraiding voices. The sea was filled with boats driving hither and thither, with no hand to guide them, and with yards, sails, and cordage, remnants of the stupendous ruin there progressing. In the distance, but where the light fell strong and red upon them, bringing out in bold relief each spar and line, were the two ransomed vessels, the Noah's arks that were to bear away the human life which in a few hours would be all that was left of the gallant whaling fleet.

"Imagination assisted us no doubt, but we fancied we could see the varied expressions of anger, disappointment, fear, or wonder, that marked the faces of the multitude on those decks, as their eyes rested on this last great holocaust; and when, one by one the burning hulks went hissing and gurgling down into the treacherous bosom of the ocean, the last act in the bloody drama of the American civil war had been played."

He adds:

"From one of these last prizes we obtained the first news from the States we had received for many months. She had San Francisco papers bearing date the fifteenth of April, and containing intelligence of the assasination of Abraham Lincoln."

This day's work was clear piracy. It was known to Waddell that Richmond had been captured and that Mr. Lincoln had been assasinated, but yet these vessels were burned. The captains protested and showed that the "Richmond government" was no more, but without effect.

THE CRUISE HOME TO ENGLAND.

The next day the Shenandoah sailed southward and was soon out of the ice. She made no more captures.

Cruise of Shenandoah, page 218.

On the 2d August she fell in with an English bark. They then learned, says the master's mate, that "it had been three months since hostilities ceased, leaving us without a flag or a country, and during that time we had been actively engaged in preying upon the commerce of a Government that not only claimed our allegiance, but had made good her claim by wager of battle." * *

Cruise of Shenandoah, page 220

"Every man of us knew that if the Shenandoah was captured *before she could reach an English port*, that his days were numbered."

"As a cruiser we had no longer a right to sail the seas, for in that character we were liable to capture by the ship of any civilized nation, for we had no longer a flag to give a semblance of legality to our proceedings. * *

"The crew presented a petition signed by nearly all of their number requesting our captain to proceed at once to Sidney, Australia, the nearest English port, and there abandon the ship to Her Majesty's authorities, and let each man look out for his own personal safety.

"Captain Waddell at once professed to accede to this request."

Cruise, p. 229.

After several days it was evident that Captain Waddell was not going to Sidney, and "a petition was gotten up among the officers, and signed by all of them with the exception of five, requesting the Captain to run for Cape Town, then to the eastward of us, and there surrender the ship to the proper authorities." But Captain Waddell pointed the Shenandoah to her home at Liverpool.

The Shenandoah rounded Cape of Good Hope on 13th September, 1865, and arrived at Liverpool on 6th November, 1865.

WELCOME HOME.

On his arrival, Captain Waddell wrote Earl Russell, surrendering the Shenandoah to Her Majesty's Government for such disposition as in its wisdom should be deemed proper. Says Hunt:

Cruise, p. 250.

> "We had now to await an answer to this letter, which would advise us whether we were to be held as prisoners by the British Government, turned over to the United States authorities, or set at liberty."

But they were after two or three days relieved of their suspense and made happy. Says Hunt:

Cruise, p. 259.

> "Captain Paynter of the Donegal, to whom the Shenandoah had surrendered, received a telegram ordering him to at once release such of the officers and crew of that ship as were not British subjects.
>
> "As soon as he received these instructions, Captain Painter proceeded to the Rock Ferry Slip, and applied for a steamboat. Mr. Thwarts, who had charge of these boats, at once placed at his disposal the Steamer Bee, in which he immediately went off to our cruiser. On gaining the deck he made known the object of his visit to Captain Waddell, who ordered his officers and crew to be summoned to the quarter deck. The roll books were brought out, and the names called in regular order. As each man answered to his name, he was asked to what country he belonged, but in no instance did any acknowledge himself a British subject. The majority claimed to be either native or adopted citizens of America, but several who insisted that they had been in some one of the Confederate States, had an unmistakably Scotch accent, and probably opened their eyes for the first time in this world, a good deal nearer the Clyde than the Mississippi.
>
> "This formality having been gone through with, Captain Paynter informed them that they were at liberty to proceed on shore, and the intelligence was received with boisterous demonstrations of joy."

So the British crew were safe at home again.

The sailor, Temple, gives this account of the mustering out:

Affidavit Temple, v 3, p. 480.

> "Captain Paynter visited the ship frequently On the morning of the day we were released be came, and as he was going he said, "Men, you need not be impatient; you will soon be released; probably this evening. I am doing all in my power to obtain it for you. As soon as the formalities are got through with, and I receive the proper instructions, I will do it." That evening, the 8th of November, he came on board in a tug-boat. As he came on board he said, "I have come to release you, my men." He was cheered by the men. He went immediately aft. The men were all mustered. While we were mustering and making preparations to go aft, Captain Waddell sent some of the marines among the men to tell them they were all to be Southerners when their names were called. I was myself told this by a marine by the name o

John Ivors, who told me that the Captain had sent him to tell all the crew. On being mustered aft in the presence of Captain Paynter and Lieutenant Whittle, in consequence of this information, we all stated that we were Southerners when our names were called out. The mode was this: We were all mustered on one side of the vessel. Lieutenant Whittle called our names and number, and as each man was called he passed in front of Captain Paynter, who addressed to each, "What countryman are you?" *All the Englishmen, Scotch or Irish, answered that they were Southerners.* The other foreigners answered according to their nation. As soon as this was done we were told to get into the steamer as quick as possible, which we did, and were then landed at Liverpool. No parole was asked or taken from any of us. We were told we were at liberty."

On 7th of November, Mr. Adams writes the Earl of Clarendon as follows:

Adams to Clarendon 7 Nov. 1865, v. 3, p. 447.

"Inasmuch as the ravages of this vessel appear to have continued long after she ceased to have a belligerent character, even in the eyes of Her Majesty's Government, it may become a question in what light the persons on board and engaged in them are to be viewed before the law.

"The fact that several of them are British subjects is quite certain. Whilst I do not feel myself prepared at this moment, under imperfect information, to suggest the adoption of any course in regard to them, I trust I may venture to hope that Her Majesty's Government will be induced voluntarily to adopt that which may most satisfy my countrymen, who have been such severe sufferers, by its disposition to do everything in its power to mark its high sense of the flagrant nature of their offenses."

We have already seen that the officers and crew were all released. This release the Earl of Clarendon seeks to justify.

Clarendon to Adams, 11 Nov 1865, vol. 3, p. 460.

"Her Majesty's Government were not in possession of any evidence which could be produced before any court or Magistrate, for the purpose of controverting the statement made to them by the Commander of the Shenandoah in the letter of which I enclose a copy, or for the purpose of showing that the crime of piracy had in fact been committed by the vessel.

"It only remained, therefore, to ascertain whether any of the parties were British subjects; and if so, whether any sufficient evidence could be obtained against them to warrant a prosecution on a charge of violating the provisions of the Foreign Enlistment Act by taking part in hostilities on board the vessel.

"Accordingly the Board of Admiralty were instructed by the Secretary of State for the Home Department to cause the necessary inquiry to be instituted in regard to the presence on board of persons of the last-mentioned class, and if evidence could be obtained against any of them, to cause them to be detained and taken before a magistrate, and to allow the rest to go free.

"In pursuance of these instructions, the senior naval officer at Liverpool at once proceeded on board the Shenandoah, and having mustered the crew, he reports himself to have been 'fully satisfied that they were all foreigners, and that there were none known to be British-born subjects on board;' whereupon they were all landed, with their effects."

On the receipt of Mr. Adams letter and the reply of the Earl of Clarendon, Mr. Seward writes:

Seward to Adams, 30 Nov. 1865, v. 3, p. 469.

"This suggestion was made by you to Lord Clarendon in what seems to us to have been a very respectful and becoming manner. The result which followed was the discharge and unconditional enlargement of the offenders from custody, upon two grounds; first, that Her Majesty's Government have in their possession no evidence to impeach a prevaricating plea of the commander. This position was assumed when every part of the unlawful transaction complained of had occurred either in British ports or on the decks of the Shenandoah, herself a British vessel, and when all those transactions had been fully made known to Her Majesty's Government, and when any parties who could give the necessary testimony for the conviction of the pirates were not only within British jurisdiction, but actually within custody of agents of Her Majesty's Government. The other ground which is assigned for the enlargement of the offenders is, that none of them were subjects of Great Britain. Whereas, upon evidence which seems to this Government entirely conclusive, all the offenders were either native subjects of the Queen, or had become, by some sufficient form of refuge or domiciliation, ameniable, equally with native subjects, to the penal laws of the realm.

"The United States regret that they are unable to draw from these proceedings any other inference than the painful one that Her Majesty's Government have assumed to hold guiltless of all crime subjects of Her Majesty who have in a time of profound peace waged naval war upon the high seas against unarmed citizens of the United States engaged in lawful commerce and navigation."

The correspondence continued, but to no satisfactory result.

We have already seen that one Bullock had really been the Confederate secretary of the navy with his office at Liverpool, and had there built and equipped the Florida, Alabama, Georgia and Shenandoah and from that port had armed them.

From that port he now, 19th June, 1865, writes to Captain Waddell:

Bullock to Waddell, 19 June, 1865, v. 3, p. 457.

"I hereby direct you to desist from any further destruction of United States property upon the high seas, and from all offensive operations against the citizens of that country."

"Your first duty will be to take care of the *personel* of your command, and to pay off and discharge the crew, with due regard to their safety, and the facilities for returning to their respective homes."

This letter was sent by Earl Russell to the English consuls at the various ports at which the ship might be expected.

Bullock did not know at what English port she would arrive; the crew wanted to go to Australia; the officers desired to be left at Cape Town; the captain did not receive Bullock's letter from any of Her Majesty's consuls, but acting on its spirit and with due regard to "his first duty," he went straight to Liverpool and there he paid off and discharged his crew.

Certainly this showed "due regard to their safety and to their facilities for returning to their respective homes."

Affidavit of Margaret Marshall, vol 3, p 491.

The wives of the crew had received monthly payments during their husbands' absence at the office of Fraser, Trenholm & Co., Liverpool.

Dudley to Seward, 11 Nov., 1865, vol 3, p 454.

The crew were paid off in English gold, and Jones, Highat & Co. (same men who had been convicted in Florida case) sent off to the crew a boat's load of provisions. The officers were *feted* in Liverpool, the crew were all released, and the Shenandoah was given up to the United States Consul.

Dudley to Adams, 18 Dec. 1865, v. 3, p. 476.

She was owned at the time she sailed on her cruise by Richard Wright, an English merchant at Liverpool, in whose name she was registered at London, and who so late as 1865 stood there as her registered owner.

A circular in these words was issued on 7th September, 1865, from the British Colonial Office to all colonial authorities:

Circular, vol 3, p 457.

"It is the desire of Her Majesty's Government that the Shenandoah should be detained in any British port she may enter. If she should arrive in a

> port of your colony you will notify to her commandant that it is incumbent on him to deliver up the vessel and her armament to the colonial authorities, in order to be dealt with as may be ordered by Her Majesty's Government. *You will detain the vessel by force if necessary*, supposing that you have on the spot a sufficient force to command obedience; and, at all events, you will prohibit any supplies of any description to the vessel, so as to give her no facilities whatever for going to sea."

This order serves to show what might have been done earlier.

Before this order was written the Shenandoah, built, equipped, and partially armed in a British port, fully equipped from another vessel who left a British port with British guns, had arrived at another British port, Melbourne, and there been most hospitably received against the remonstrances of the United States Consul; had been there refitted, supplied with coal, and increased her fighting force by enlisting 36 British subjects, had gone to the North Pacific and burned thirty American whalers, and had rounded Cape Horn on her way home to a British port, being all this time registered in the name of a British subject.

Before this letter was received at Melbourne, the Shenandoah had arrived home at Liverpool; her officers had surrendered her to the British Government, her crew had by instruction answered that they were Southerners, had been paid in British gold, and had gone to their wives in England, Scotland and Wales, who during their absence had received monthly payments from a banking-house in Liverpool.

Who, then, will say, in consideration of these facts, that the United States Government is not justified in asserting, as did Mr. Adams to Lord Russell, in a letter dated 21st October, 1865, that "in view of the origin, equipment, and manning of that vessel, (Shenandoah,) my Government claims to look to that of Great Britain for indemnification for this and other losses that have been occasioned by the depredations."

Adams to Russell, 21 Oct., 1865, vol 3, p 376.

Of this letter of Mr. Adams, Mr. Seward, acknowledging the receipt of a copy, said:

"Your proceedings, as thus presented, are entitled to special commendation, and are fully approved by this Department."

Seward to Adams, 3 Nov., 1865, vol 3, p 455.

DESTRUCTION BY THE SHENANDOAH.

The Shenandoah captured thirty-eight vessels; of these, thirty were whalers.

These last vessels were thousands of miles away from home, and had been absent one, two, three and four years; for months they had sailed in order to secure a few weeks whaling in the polar seas; they had been fitted out at great expense; the officers and crews of some of them had previously seen their vessels and oil burnt by the Sumter, Alabama, Florida or Georgia.

Officers and crew were alike with the owners interested in the voyage. None of them had fixed wages, but all were promised a certain "lay," or share in the oil taken. Expecting no danger the owners had but little insurance on either ship or oil. Expecting no danger, one burning ship inviting others to save, really lured them to their own destruction. Nine ships were gathered to assist one stove ship. The Shenandoah filled two of them, "Noah's Arks," the master's mate called them, with the crews of all, and "eight burning hulks went hissing and gurgling down into the treacherous bosom of the ocean."

Why speak of "the treacherous bosom of the ocean" and not speak of that treacherous bosom which invites to destruction by showing the British or United States flag, and then shows that destruction is at hand by raising the flags which, in the language of the master's mate, "no longer gave a semblance of legality" to recognized piracy; for Captain Waddell on this day, the 28th June, 1865, had the San Francisco papers of the 15th April, which contained the intelligence of the fall of Richmond, the assasination of President Lincoln, and probably of the surrender of Lee, which took place on the 14th, and yet he made "this last great holocaust?"

The claims filed for the damages by the Shenandoah amount to over four millions of dollars.

A CHANGED LINE OF CONDUCT.

I have now shown where and by whom the Florida, Alabama, Georgia, and Shenandoah were built, equipped, and armed; where and from whom they received their supplies and sailors; how they destroyed the vessels of the United States, and how the Florida and Alabama were sunk and the other two went home to a British port.

Before attempting to show that Great Britain ought and could have prevented the destruction by these vessels, and must therefore pay for the same, I think it well to show what was done by Great Britain to prevent the escape of the Alexandra, the Pampero, and Laird's Rams.

We shall find that the Government acted differently in these cases from what they did in the earlier cases of the Florida and Alabama.

THE ALEXANDRA.

Corres., v. 2, pp. 258, 314.

The Alexandra was built at Liverpool by Miller & Sons for Fawcett, Preston & Co., who put in the engines. These same parties built the Florida.

This vessel had been an object of suspicion to Mr. Dudley for some time; but in consequence of his experience with the Florida and Alabama he was quite discouraged, and on the 11th March, 1863, after she had been launched, he wrote to Mr. Seward:

Vol. 2, p. 258.

> "I shall do all I can to stop this vessel, but enter upon the business with doubts and misgivings. My attorney here gives me no encouragement, and thinks we shall fail if the Government adhere to the rule they laid down in the other cases, of requiring us to make out a case before they moved to arrest her. If there was any way to get the case up before their courts, or to compel the parties building her to testify, there would be no difficulty; but the Government gives us no aid, and leaves us to make out in the case in the best way we can, and having no process to compel persons to

testify, we cannot obtain one particle of evidence, except such as is voluntarily given, and the Government here requires us to produce legal evidence before they will move."

On 20th March, 1863, he wrote again speaking of a recent interview he had had with Mr. Adams about stopping the Alexandra. He says:

Vol. 2, p. 258. "I found Mr. Adams very much discouraged about the attitude of the English Government, in reference to the building and fitting out of these vessels, and doubting somewhat the policy of making further efforts. He, however, assented to my obtaining the opinion of Mr. Lush, who is admitted to be one of the most eminent lawyers in the Kingdom. * * *

"I have determined to get up a case, if possible, against this vessel, and shall employ the necessary persons to do it. It will cost a very considerable sum of money, no doubt, but I think it best to make the effort."

Mr. Lush advised that all the evidence that could be obtained should be laid before the Government; consequently on the 30th March, 1863, Mr. Adams transmits to Earl Russell, various affidavits that had been obtained by Mr. Dudley, tending to show the character and purpose of the Alexandra.

On 31st March, Earl Russell acknowledges the receipt.

On 7th April Mr. Adams wrote to Mr. Seward:

Vol 2, p 268 "I send this note out of the ordinary course merely to let you know, in advance of my regular dispatches, that on Sunday last, the 5th instant, I received a note from Lord Russell apprising me that, with reference to my letter of the 30th ultimo, orders had been sent to Liverpool for the seizure of the Alexandra. She was accordingly taken possession of on Sunday, as appears by notices in all the morning journals.

"I think we may infer from this act, that the Government is really disposed to maintain its neutrality. I rejoice at this symptom of a disposition to defeat the machinations of those who hope to relieve the rebels by the creation of a diversion from this side."

Mr. Adams writes to Mr. Seward, 23d April, 1863:

Vol 2, p 278 "Before this reaches you information will have been received of the decision of the Government to detain the Alexandra, of the investigations ordered by it, and of the result. I have no doubt that it is now their intention to commence criminal prosecutions of some of the parties concerned. The effect produced in Liverpool by this intelligence has been to stop, for the time, the prosecution of all work of that particular kind—fighting ships."

Note in these last two letters the effect produced by the seizure of the Alexandra.

It was about this time that the United States Government sent over Mr. Evarts for the purpose of giving Mr. Adams such legal counsel as he could.

After it had been decided to bring the Alexandra case before the court, it was not considered safe to bring the case before a Liverpool jury and the venue was changed to London. The trial began 22d June, 1863, Sir William Atherton, the Attorney General, Sir Roundell Palmer, the Solicitor General, Sir Rob. Josh. Phillimore, Queen's Advocate, and other eminent counsel, appeared for the Crown; and Sir Hugh Cairns and other counsel for the claimants.

The evidence was clear that the Alexandra was being built under the contract for the insurgents, and by men who knew that she was afterwards to be armed as a war vessel, and that she was fitted for a war vessel, though not yet armed:

The jury found for the defendants under the ruling of Chief Baron Pollock, who held in effect, that to build a vessel for a belligerent did not constitute an offense under the Foreign Enlistment Act; that Englishmen might build as many war vessels, even armed vessels, as they pleased for either belligerent, either for sale or by contract; that equipping, furnishing, fitting out, and arming, all meant the same thing, namely, arming; and that, therefore, there could be no offense without the vessel was armed, even if she was intended by the builder to be used against one belligerent.

Vol. 5, p. 129.

He said: "Gentlemen I must say that it seems to me that the Alabama sailed away from Liverpool without any arms at all, merely a ship in ballast, unfurnished, unequipped, unprepared, and her arms were put in at Terceira, not a port in Her Majesty's dominions.

"The Foreign Enlistment Act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever. Now, gentlemen, I do not know whether you desire me to go over the evidence."

The jury—"Quite unnecessary, quite unnecessary."

Again he said to them. "If you think the object really was to build a ship in obedience to an order and in compliance with a contract leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the Foreign Enlistment Act has not been in any degree broken. I leave you to find your verdict unless you wish me to read the evidence over to you."

The jury—"No we do not wish that, my Lord."

The jury considered their verdict for a short time and found for the defendants.

Under such ruling a London jury was no better than one from Liverpool.

RECEPTION OF VERDICT.

On receipt of the news of the Alexandra trial, Mr. Seward wrote to Mr. Adams:

Seward to Adams, v. 2, p. 290.

> "If the rulings of the chief baron of the exchequer in the case of the Alexandra shall be affirmed so as to regulate the action of Her Majesty's Government, the President will, as he thinks, be left to understand that there is no law in Great Britain which will be effective to preserve mutual relations of forbearance between the subjects of Her Majesty and the Government and people of the United States, and in the only point where they are exposed to infraction. The fitting out of the Alabama and the Florida, as well as of the Alexandra, will thus receive the sanction of the Government, and the United States will be without any guarantee whatever against the indiscriminate and unlimited employment of capital, industry and skill by British subjects in building, arming, equipping, and sending forth ships of war from British ports to make war against the United States. * * * *
>
> "If the law of Great Britain must be left without amendment, and be construed by the Government in conformity with the rulings of the chief baron of the exchequer, then there will be left for the United States no alternative but to protect themselves and their commerce against armed cruisers proceeding from British ports as against the naval forces of a public enemy, and also to claim and insist upon indemnities for the injuries which all such expeditions have hitherto committed or shall hereafter commit against the Government and the citizens of the United States."

As Her Majesty's Government determined to take an appeal in this case, Mr. Adams did not present the letter last quoted.

The counsel for the Crown asked for a bill of exceptions, but the chief baron refused to sign the bill presented, and denied that his rulings and instructions were as represented.

Motion was then made for a new trial, addressed to the full court of exchequer. On the hearing of the arguments for a new trial, Baron Bramwell sustained the rulings of the chief baron and the other two barons, Channell and Pigot, dissented. As there was then an equally divided court the junior baron, Pigot, withdrew his judgment, and a new trial was refused. An appeal was then taken to the court of exchequer chamber and decided, on the technical objection that no appeal lay from a refusal of a motion for a new trial.

On an appeal taken to the House of Lords the right of appeal on such a motion was also denied.

The vessel was accordingly delivered to the claimants on the 25th day of April, 1864.

Says Mr. Dana, in a note to his edition of Wheaton's "International Law:"

> "The case of the Alexandra, therefore, settled no law; it only settled that, for the purposes of that case, the law was inaccessible. The mortification felt by the English bar, and by all interested in the judicial system of England was so generally expressed as to have so far passed into history that it may without impropriety be referred to in a treatise on international law."

This is what Mr. Adams says of the trial in a letter to Mr. Seward, dated 8th April, 1864:

Adams to Seward, 8 April, 1864, vol. 2, p 304.

> "There never was such a comedy performed on a grave subject in the whole history of law.
>
> "The feeling of the profession seems on the whole to be one of mortification at this spectacle of the utter inefficiency of the national tribunals to administer justice. The English are indifferent to reproach, but they sensibly feel ridicule. Proudly as they boast of the perfection of their domestic institutions, it is with no little regret that they open their eyes only to perceive so glaring an instance of their defects. The fact that it has happened in a case relating to the United States occasions little regret beyond the sense that it lays them open to strictures from that quarter, not the more agreeable because they are felt to be deserved."

At the most, in this case, we have the opinions of Barons Pollock and Bramwell against those of Barons Channell and Pigot and the law officers of the Crown, and hereafter we shall find that this same Baron Bramwell has recommended that the foreign enlistment law be so amended as beyond all doubt to include such a case as that of the Alexandra.

To show that it ought to include such cases note the subsequent history of the Alexandra.

THE "ALEXANDRA" AS THE "MARY."

After her release she was formally handed over to the claimants. Mr. Dudley kept watch upon her and reported that he had no doubt but that she was going to sail as a privateer. She sailed on the 25th July under the name of the Mary and in due time arrived at Halifax. The Governor of Nova Scotia directed that she should be watched having instituted inquiries for his own satisfaction, and declared that he was prepared to interfere if any illegal equipment of that vessel for warlike purposes should be attempted in that province.

From Halifax the Mary went to Nassau and arrived there in November; 1864.

The United States consul called the attention of the Government to the existence of guns and munitions of war on board. Search was made and nothing was found but a 12-pounder gun and a case supposed to contain shell. Upon this the Lieutenant Governor, acting upon the advice of the Attorney-General, informed the consul that there was not sufficient ground for detaining the vessel. The consul protested urgently against the release, but finally was informed that the Government could not proceed upon the evidence offered. This was the state of the case when Mr. Rawson the newly appointed Governor arrived.

Contrast his conduct with the conduct of Governor Bailey who was the Governor at the time the Florida was seized at Nassau.

This is the account Governor Rawson gives of his action—

Rawson to Burnley, 15 Dec. 1864, v. 2, p. 309.

> "When examining the correspondence and making inquiry of the officers who searched the vessel, I find that there were *supicious facts* bearing upon that case which did not appear in the papers and that certain packages which were shipped at Bermuda had not been opened nor were their contents known. I therefore directed that they should be landed and opened. The result is shown in inclosure No. 1, which among other things proves the continued connection of the Mary with Mr. Hamilton, an officer of

the Confederate States, whose name was brought forward by the Attorney General on the occasion of the trial in England as one of the proofs against the parties who owned the Alexandra. Upon the discovery of this further evidence, and receiving the opinion of the Attorney General, I ordered the vessel to be seized, and she is now in charge of the customs, moored opposite the ordnance wharf for protection. The Attorney General will commence legal proceedings without delay, and I have received a letter from the United States consul thanking me for my proceedings in this case."

Here at last we find a colonial governor who was not blind and who acted on *suspicious facts* and finding evidence against the vessel he orders her seized without 'legal proceedings,' and promises that they will follow without delay.

On board were found one gun and various small articles indicating that she was in part fitted for a vessel of war. Among other things in a chest of private effects was a blank Confederate commission. If the Florida had been examined with the same desire to arrive at the truth and to prevent violation of law the blank commission on board of her would never have been filled out, and the Confederate flag would never have been hoisted on board of her at Green Key.

On hearing of the action of Governor Rawson, Mr. Seward wrote to Mr. Burnley: "It is hoped that it may be a beginning of measures in arresting piratical operations injurious to both countries."

SOLICITOR-GENERAL COUNSEL FOR THE FLORIDA AND MARY.

At the trial of the Florida in 1862, Mr. Burnside appeared as counsel for the claimants, and assisted to obtain her release. At that time he was probably Solicitor-General, certainly he was at the time of the seizure of the Mary, and a letter from Governor Rawson shows what he attempted to do.

Rawson to Burnley, 14 Jan., 1865, v. 2, p. 312.

"I deem it advisable that you should be made acquainted with the fact that in consequence of my having become aware that Mr. Solicitor-General Burnside had been retained and was acting for the defendants in the matter of the steamer Mary, seized by my orders in this port, of which you have already received notice, I immediately requested that gentleman to resign his brief or his office.

"2. Mr. Burnside pleaded his right to act against the Crown, under a general license which he possesses in all cases in which the Attorney General does not require his services. But I informed him that this was not a case contemplated in his general license; that although his services were not required to assist in the prosecution, it was not fitting that he should appear against the Crown, and that the United States Government, which is interested in the due enforcement of the Foreign Enlistment Act in this case would learn with surprise, and might complain with reason, that while one law officer was enforcing the provisions of the Act, another was engaged in opposition to him, and it would be difficult to convince them that this was not with the consent or approval of this Government.

"3. Mr. Burnside, in consequence, elected to resign his office."

Transmitting a copy of this letter to Mr. Seward, Mr. Burnley says:

Vol. 2. p. 312. "The course pursued by the Lieutenant Governor, seems to me to have been an eminently wise and sensible one, as showing a proper appreciation as to how English law should be administered and with a friendliness of expression towards the Government of this country which it gives me much pleasure to communicate."

Here then at last we have one of Her Majesty's officers showing "a proper appreciation of how English law should be administered," and another commending such administration as "eminently wise and sensible." Contrast the acts and opinions of these two officers with that of the man Burnside, who though an officer of Her Majesty took a fee to shield the *Mary* from the punishment of the law she had broken, and which law it was his duty as Solicitor General to maintain. Says the governor, "I immediately required that gentleman to resign his brief in his office. Mr. Burnside, in in consequence elected to resign his office."

Comment is not necessary, but we can now conjecture why the Florida escaped with Burnside, Her Majesty's Solicitor-General, as Her counsel.

I cannot ascertain whether the Mary was ever condemned, but Lee surrendered a few months after seizure. Her Majesty withdrew Her proclamation which alone would have enabled her to destroy United States commerce.

CONCLUSIONS.

From the Alexandra case we learn that the English Government determined to seize her upon evidence that the vessel was being built and equipped for the Confederates, though she had not yet received any armament; that the Crown law officers considered this a violation of the neutrality Act; that two of the four judges of the Exchequer Court so considered it; that one of the other two judges of that court then holding, that the law did not cover such a case, has since advised that it should be amended so as to cover it; that the opinion of the law officers, the decision of the two judges, and the advice of the Chief Baron were in accordance with the duty of a strict and impartial neutrality as seen in subsequent history of the Alexandra, and that it was possible with honest and faithful Government officials at Nassau to prevent the recurrence of such a breach of neutrality as renders Great Britain liable for the damages occasioned by the Florida in consequence of her release at Nassau, in 1862.

THE PAMPERO.

This vessel was built at Glasgow by Messrs. Thompson & Co.

Correspondence, vol. 2, p. 201–229.

In September, 1862, when she was building, Mr. Dudley had become satisfied that she was intended for the Confederates, but it would seem that neither he nor Mr. Adams had, up to the 21st March, 1863, given any information in regard to her.

On that day Earl Russell wrote to Mr. Adams:

Vol. 2, p. 203.

> "It appears, from information collected by the commissioners of customs, that there are only two large steamers in course of construction at the yard of Messrs. Thompson & Co.; that one of them has the appearance of being constructed to receive armor plates, but that her bottom is not more than half plated, and that the planking of her top sides has only just been commenced.
>
> "The other is a screw steamer, intended for Messrs. Burns, of Glasgow, and is to be employed in the Mediterranean trade. Neither of these steamers, however, can be completed for several months."

On 23d March, Mr. Adams replied:

Vol. 2, p. 203.

"Information of the same nature received from other sources has led me to a belief that this is one of a number intended to carry on the piratical species of warfare practiced by the insurgents against the commerce of the United States, in accordance with the plans laid down in the intercepted correspondence which I had the honor some time since to lay before you. It is a source of much gratification to me to learn that this proceeding is exciting the attention of Her Majesty's Government."

As a contrast to what Mr. Adams has been obliged to write in an earlier case I quote from his letter to Mr. Seward of 27th March, '63, enclosing the two notes last quoted, he says:

Adams to Seward, 27 Mch., 1863, v. 2, p. 202.

"It is proper to mention that the investigation appears to have been initiated by His Lordship upon information not furnished from this legation, and that his communication to me was perfectly spontaneous."

After this the matter seems to have rested waiting the launching of the vessel until the 17th October, when Mr. Adams wrote Earl Russell giving further information; and on 4th November he did the same.

The Government were now induced to act as there were strong suspicions against the vessel; and on 24th November Dudley writes to Seward:

Vol. 2, p. 217.

"The Government have instructed one of their officials of Glasgow to inquire into the matter of the construction of the war steamer Pampero, building there by the Thompsons for the Confederates.

"They have the power, under the Scotch law to summon witnesses and compel them to testify. Pending the inquiry, they have placed the vessel under surveilance, and stationed a gunboat to watch her."

"If the officer is only honest in his investigation, and desirous of ascertaining the truth, all will be well and the vessel stopped; but if he acts as most of the other subordinate officials with whom I have had to deal he will whitewash the vessel and let her go."

On 5th December, Mr. Adams sends more affidavits to Earl Russell who the same day acknowledges them.

On 28th December, Mr. Adams takes the liberty to submit private information "even though it does not appear to be authenticated in the usual manner," that certain persons propose to seize the Pampero.

Vol. 2, p. 224. Earl Russell replies the next day "that I have caused the information contained in your letter to be communicated to the proper department of Her Majesty's Government with a view to such measures being taken as the law allows to defeat any such attempts as are therein alluded to."

This hearsay testimony received more attention than the sworn testimony as to the Florida and Alabama.

In January the ram Pampero was formally seized. I quote from the *Morning Star* of 23d March, 1864, giving an account of the seizure, trial and decision:

Vol. 2, p. 225. "The Pampero was seized in the Clyde under very much the same circumstances as the Alexandra was detained in the Mersey, upon the allegation that she was being fitted out as a Confederate privateer.

"The case came before the Exchequer judge of the county court of session, upon an elaborate information at the instance of the Crown, framed apparently upon the model of that which has been so well torn to pieces in the Alexandra discussions. The defendants took exception to the relevancy in point of law of certain of the counts in the indictment, upon the same grounds as were urged by Sir Hugh Cairns and his brethern in the exchequer court. They contended that these objections should be disposed of before trial, but the exchequer judge decided that it would be better to get at the facts in the first instance before dealing with the objections to the relevancy, and appointed a day of trial. The defendants appealed to the 'Inner House' which fulfils in Scotland the functions of the Exchequer Chamber in such cases as the present, and on Friday last their lordships united in a very sound judgment, which we may well commend to the attention of the lord chief baron, and those who have spun so many flimsy theories in favor of privateer builders out of the seventh section of the statute.

"Two leading objections were taken by the defendants: first, that with which we are now tolerably familiar, that as the information did not contain any allegation of arming, the statutory words, "equip, fit out, and furnish," were not applicable in regard to a cruiser or vessel intended to commit hostilities; and the second, that the statute is not directed against those who merely equip a vessel even when it is intended to commit hostilities, if the hostilities are not meditated by the actual equippers, but by purchasers or parties into whose hands the vessel may ultimately come."

"The judges were unanimous. They repelled both pleas, and ordered the case for trial on the 5th of April.

"These judges, all of them men of distinguished ability, and the Lord President of the court, especially conspicuous for the clear-ness and vigor of his mind, must now be added to the two judges of the court of exchequer who differed from the ruling of the lord chief baron upon the construction of this imperial statute. It is somewhat novel to find Scotch judges brushing aside legal cobwebs and subtle theories, and arriving at the sound common sense construction of an act which has puzzled the experienced minds of the English bench, but none the less satisfactory that the views adopted by the law officers of the Crown have thus received the imprimitur of the highest court in the sister kingdom. We cannot doubt if the lord chief baron had allowed the bill of exceptions originally tendered by the counsel for the Crown, that the same sound views would before this have been announced by the highest judicial authority in the empire."

The owners afterwards consented that a verdict should be entered for the Crown and she was condemned.

Note in this case that Earl Russell appears as giving information instead of demanding legal evidence; that the Scotch judges had power to summon witnesses and compel them to testify; that the Government acted on testimony "not authenticated in the usual manner," and that the four judges all agreed in a judgment which would have condemned the Florida, Alabama, Georgia and Shenandoah.

LAIRDS' RAMS.

The construction of those two powerful war vessels was begun by the Lairds at their yard at Birkenhead in the summer of 1862.

As early as July, 1862, Mr. Dudley first writes to Mr. Seward in regard to them, and afterwards continued so to do.

One of the rams was launched on July 4, 1863. Meanwhile the Alexandra had been seized, and under the ruling of Chief Baron Pollock the verdict had been for the defendants. Under these circumstances Mr. Dudley was very despondent, and on the day before the launch wrote thus:

Vol. 2, p. 322.

"Our evidence, or that which we now have is not very strong. It does not bring the building directly home to the Southern Confederacy. It is not direct or positive, and even if it was the authorities might shield themselves under the ruling of Chief Baron Pollock in the Alexandra case, and refuse to stop them. The Department must not lose sight of the fact that one of the Lairds is a member of Parliament, and the Government here will be more averse to doing anything against him than they would against a private individual who had no influence or voice in the House of Commons. I am doing all I can to strengthen and obtain additional evidence against these vessels, but find it now much more difficult than it was before the trial of the case against the Alexandra. The cry they have got up against me and the spy system, which they say I have inaugurated, has driven almost all my men away.

"The men who gave evidence in that case, or most of them, have been losers by it; some have been turned out of employment, and others lost jobs. (Neil Black, a ship-carpenter, has been informed by three firms for whom he worked that they should remove their business from him, because he testified in that case.) The feeling is deep and strong against us, and the whole town seems to take sides with those who are building these vessels. The effect has been to intimidate those who are well disposed, and caused many who were in my employ to refuse longer to serve me. It is not at all certain that any jury in this country would condemn a vessel let the evidence be ever so conclusive. I have strong doubts in my mind whether the jury in the Alexandra case would have found a verdict against the vessel even if the judge had charged them to do so."

Adams to Russell, 11 July, 1863, vol 2, p 325.

On 11th July, 1863, Mr. Adams first writes to Earl Russell on the matter, transmitting a letter of Mr. Dudley, dated 8th July, and several affidavits tending to show that these two iron-clad rams were being built by the Messrs. Laird for the insurgents.

In the United States the feeling excited by the escape of the Florida and Alabama, and the destruction caused by them, had become very intense, and Mr. Adams in this letter truly expressed that feeling when speaking of the way in which this vessel was being built for the insurgents; he said:

> "It is not unnatural that such proceedings should be regarded by the Government and people of the United States with the greatest alarm, as virtually tantamount to a participation in the war by the people of Great Britain to a degree which, if not seasonably prevented, cannot fail to endanger the peace and welfare of both countries."

On the 16th and 25th of the same month, on the 14th of August, and on the 3d of September he transmitted additional affidavits.

Meanwhile the work on the ram continued, her engines had been put in by Fawcett, Preston & Co., she was receiving her coal, and the prospect was that she would soon be off. Accordingly, on 4th September, Mr. Adams transmits further testimony, and begs permission to record, in the name of his Government, a "last solemn protest against the commission of such an act of hostility against a friendly nation."

On that same day he received a letter from Earl Russell, stating that "*Her Majesty's Government are advised that they cannot interfere in any way with these vessels.*"

The next day Mr. Adams replied:

Adams to Russell, 5 Sep., 1863, vol 2, p 365.

> "I trust I need not express how profound is my regret at the conclusion to which Her Majesty's Government have arrived. * * *
>
> "It would be superfluous in me to point out to your Lordship that this is war. No matter what may be the theory adopted of neutrality in a struggle, when this process is carried on in the manner indicated from the territory, and with the aid of the subjects of a third party, that

third party, to all intents and purposes, ceases to be neutral. Neither is it necessary to show that any Government which suffers it to be done fails in enforcing the essential conditions of international amity towards the country against whom the hostility is directed. In my belief it is impossible that any nation retaining a proper degree of self-respect could tamely submit to a continuance of relations so utterly deficient in reciprocity. I have no idea that Great Britain would do so for a moment.

"After a careful examination of the full instructions with which I have been furnished, in preparation for such an emergency, I deem it inexpedient for me to attempt any recurrence to arguments for effective interposition in the present case. The fatal objection of impotency which paralyzes Her Majesty's Government seems to present an insuperable barrier against all further reasoning."

On 4th September, Mr. Dudley writes to Mr. Seward, having information that the English Government did not think they had sufficient evidence to stop the rams:

Dudley to Seward, 4 Sep., 1863, vol. 2, p 357.

"The hardship in all these cases is that they require positive testimony from "credible" witnesses before they will move. This testimony we have to procure, and they provide no means for us to obtain it. If there were processes by which we could summon witnesses and compel them to testify the case would not be so hard. As it is you can only obtain it in one of two ways, persuasion or bribery. The first, in a hostile community like Liverpool, where every man who takes the side of the North or who would testify against the parties aiding the Confederates is marked, if not persecuted, is almost impossible, and the last taints the evidence. I have done the best I can; and, unless I should be fortunate enough to stumble upon some unexpected testimony, the case will have to rest upon the evidence now before the Government. I think it sufficient. They must take the responsibility on themselves, either to stop or let them go to sea. The newspapers comment upon the matter, and there is scarcely a man, woman or child in the place but what knows these rams are intended for the Confederates. Among the business men on 'Change it is the leading topic of conversation. No one there pretends to deny, but all admit and know that they are for this service."

I have made these last two quotations because the first clearly sets out the character of the neutrality of Great Britain down to that time, and the second forcibly shows the inability that existed in the Foreign Enlistment Act, as it had been till then construed, to prevent what Mr. Adams truly says is "war."

The examination of this correspondence shows that, if these rams had been allowed to escape, peace between Great Britain and the United States would have been no longer possible.

Mr. Adams letter last quoted declared that this would be war.

Mr. Seward had written to Mr. Adams on the same day, of course without knowledge that it had been determined that the rams should not be held:

Seward to Adams, 5 Sept., 1863, vol. 2, p 362.

> "Can the British Government suppose for a moment that such an assault as is thus meditated can be made upon us by British built, armed and manned vessels, without at once arousing the whole nation, and making a retaliatory war inevitable." (?)

It was on the 10th September that Mr. Sumner, with a full knowledge of all the perils of the situation and the threatened war, made his great speech at the Cooper Institute, in New York, on "Our Foreign Relations." That speech was made with two objects; first, to show to Great Britain that war would come if the rams were not stopped, and second, to show that if war must come, it would come to the United States as a measure of self-defence.

Happily, the Government of Great Britain decided to change its policy.

On 8th September this note was received by Mr. Adams:

Russell to Adams, 8 Sept., 1863, vol 2, p 366.

> "Lord Russell presents his compliments to Mr. Adams, and has the honor to inform him that instructions have been issued which will prevent the departure of the two iron-clad vessels from Liverpool."

From this date active measures were taken by Her Majesty's Government, which finally resulted in the seizure of the rams, and war was averted.

When the report of Mr. Sumner's speech reached England it was answered by Earl Russell at Blairgowrie. Of this reply of Earl Russell, Mr. Adams says:

Adams to Seward, 1 Oct., 1863, vol 2, p 383.

> "It shows a marked advance in his Lordship's opinions, as well as in his confidence in expressing them. If we could understand him as conveying the sense of the ministry, his tone would be calculated to inspire confidence in its future policy."

Mr. Adams' remonstrances had already accomplished the first object for which Mr. Sumner spoke. No one can doubt but that if the rams had been allowed to escape this speech would have accomplished its second object and a war for self-defense would have been justified.

I do not mean to imply that England's determination to seize the rams was arrived at from the fear of hostile proceedings on the part of the United States, as foreshadowed in the dispatches of Mr. Adams, but I think she felt that the question was really not whether the United States should make war upon her, but whether she would suffer her citizens to make war upon the United States. She saw that this could not be done, and Great Britain remain neutral, and so it was determined that it should not be done.

THE RAMS DETAINED AND SEIZED ON SUSPICION.

As before stated it is my object to establish the Alabama claims by showing what England did in cases subsequently to the escape of the Alabama, and without considering further the reasons which occasioned this change of conduct, I go on to show what was done in the case of the rams.

Vol. 4, pp. 259–282.

My facts come from the correspondence between the English Government and the Lairds, printed by the Messrs. Lairds, and the production of which, as we will afterwards see, was refused in the House of Commons.

It seems that Mr. Morgan, surveyor, had been making frequent visits to Lairds' yards, and to save him that "unnecessary trouble," on the 4th September, Lairds' Bros. wrote to Edwards, collector at Liverpool, promising that the rams should not leave the port without his having a week's notice of their intention to deliver them over to the owners, and saying that the first vessel would not be ready for a month and the second for six or seven weeks.

Notice the part that the Collector Edwards still continues to play.

On the 5th September, he replied that their promise was satisfactory to the Board of Customs.

On the 4th September, Earl Russell requested Laird Bros. to inform him with as little delay as possible, on whose account and for what destination these vessels had been built.

On the 5th September, Laird Bros. informed Earl Russell that they were building these vessels for A. Bravay & Co., of Paris.

On the 8th September, Laird Bros. informed Edwards that it was their intention to take one of the iron clads out on a trial trip on the next Monday.

It was on this day that Earl Russell informed Mr. Adams that the sailing of the rams would be prevented.

On 9th September, the Lords Commissioners informed the Lairds' that they "*had felt it to be their duty to issue orders that the rams should not be permitted to leave the Mersey until satisfactory evidence can be given of their destination, or at least until the inquiries which are being prosecuted with the view to obtain such evidence shall have been brought to a conclusion.*"

They seem now to have first discovered "a duty" which Mr. Adams had been forcing upon them for months. Suppose they had felt this same duty to detain the Florida and Alabama "for satisfactory evidence of their destination."

This feeling of duty troubled the Collector, Edwards, as much as he had formally rejoiced at the demand of Earl Russell for "legal evidence" against "the 290," and on the 11th September, he wrote to the Lairds: "*I am sorry to say* there can be no trial trip of the iron clad ship until Earl Russell's reply can be had. *That reply may yet come in time to meet your wishes.*

The Laird Brothers promised to bring back the ram when the trial trip was finished, and relying upon this "honorable engagement" the Government concluded to permit them to make the trip, and on 14th September, Edwards telegraphed—"You have the permission of the Government to try the iron clad ship on your guarantee to return her. *I have only this moment received the telegram.*"

Compare Edwards' haste at this time with his delay to seize the "290." The man that was so quick to inform the Lairds that "the trial trip" could take place was probably the same man who hasted the trial trip of the "290," and it would he well if the Lairds would publish all the telegrams and private letters they received from this same man in that matter.

His formal letter conveying the information which he telegraphed on the moment, was not written till Sept. 17, three days later.

On the next day the Lairds confirmed their "honorable engagements," but on the 19th September, the Lords Commissioners informed them that the trial trip could not be made unless there were on board a sufficient force of seamen and marines of Her Majesty's naval service to defeat any attempt to seize her.

This time the letter did not go through Edwards, but directly to the Lairds and with a suggestion that circumstances had come to the knowledge of the government, which gave rise to an apprehension that an attempt might be made to seize the vessel while on the trial trip.

Two days later the Lairds' replied that they were not aware of any reason for such an apprehension, and gave thanks for the protection thus placed at their disposal, but did not appear to be anxious to avail themselves of it, for they added "that owing to what you have brought under our notice, and the incomplete state of the vessel, and also the present crowded state of the river Mersey, it will be desirable to defer the trial trip for some days."

Finding that the "trial trip" dodge would not succeed, some plan seems to have been made to take the vessel secretly from the dock, and hearing of this, on the 7th October, the Lords Commissioners wrote directly to the Laird Bros., saying that they had "given instructions that a custom house officer should be placed on board that vessel, with full authority to seize her on behalf of the Crown, in the event of any attempt being made to remove her from the float or dock where she is at present, unless under further directions from their Lordships; and likewise to obtain from the officer in command of Her Majesty's steamship Majestic, any protection which may become necessary to support him in the execution of this duty."

On 9th October, the Lairds replied: "Although we are not aware of any circumstances to induce us to entertain any apprehension of any attempt being made to deprive us of our property by force, we gladly avail ourselves of any protection Her Majesty's Government may think necessary for its security."

Notice that the order to put a guard on board for the "trial trip," and this one to watch and seize, if necessary, are all made on the idea expressed, but possibly not believed, that the Lairds were innocent of any intended violation of law.

On the 9th the Government was not satisfied even to have a force on board as a guard, and the Lords Commissioners informed the Laird Bros. that they *had felt it their duty* to order the seizure of both these vessels and had issued the necessary directions to the Commissioners of Customs.

On the same day the two vessels were seized.

The Lairds thought the "trial trip" would be better than seizure, and on the 17th October they hoped that the various restrictions placed upon their property might be removed, and asked whether one of the rams might make a trial trip next week.

On the 21st October, the Lords Commissioners replied "that after duly weighing all the circumstances of the case, Her Majesty's Government *are unable to consent* to the trial trip of one of those vessels, the *El Tousson*, taking place, as proposed by you; neither can they allow the removal of the armed force which is stationed for the purpose of upholding the Custom House Officers in possession of the vessel."

On the 24th October, the Lairds replied that they would be glad to avail themselves of the force of seamen and marines and again asked that the Government would consent to the trial trip.

On the 27th October, they received this reply: "I am commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you that they are unable to comply with your request to make a trial trip of the *El Tousson*, one of the ironclad vessels fitting in your yard at Birkenhead, in the course of this week, or within any other suitable time."

On 27th October Edwards wrote to the Laird Bros.:

> "I hereby beg to inform you that your two Cupola vessels are now detained under the 223d section of "the customs consolidated act," the ground of detention being a violation of "the foreign enlistment act," and I take leave further to state that the officers in charge have received directions to remove your workman at once from on board the ships."

This must have been a hard letter for "the jolly Edwards" to write.

On the 29th October, Lairds protested by a telegram, and on the same day the reply came by telegraph, that "the orders have been well considered and cannot be revoked or altered."

Lairds renewed their protest and on 2d November they received the reply that "the government had nothing to add to its communications of 29th October."

On 3d November the Lords Commissioners declined to enter into any discussion of the subject with the Lairds before the investigation that the case would necessarily receive in a court of law.

On 12th January, 1864, the Lairds asked that the vessels should be removed to the Birkenhead public docks, the government retaining possession by an armed force or otherwise, so that they might be able to complete their contract.

On 14th January, the Lords Commissioners regretted that they were unable to comply with this request.

On 25th January, the Lairds made the same request, and on February 2d had this answer: "Her Majesty's Government cannot permit the iron-clad vessels built in your yard and now under seizure to be completed."

So the rams were stopped.

The trial was postponed from time to time, and was finally fixed for 27th May, 1864, but before that time they were bought from the Messrs. Laird by the British Government.

In this case the Lords Commissioners chose to act on strong suspicion. They now "felt it to be their duty" to detain the rams "until satisfactory evidence can be given of their destination." They would not trust the "honorable engagement" of the Lairds unless a company of marines could be sent with them on the trial trip. After a month's detention *they felt it their duty* to seize, and thereafter refused the trial trip, even though the Lairds were willing to enjoy the protection of the marines, and thus the hostile expedition from a neutral port was prevented, and a neutral did not become a belligerent.

Remember the story of the seizure of the rams when hereafter we come to discuss what Great Britain ought and could have done to prevent the escape of the other cruisers.

ENGLAND'S LIABILITY.

We come now to consider what the Government of Great Britain ought to have done to prevent the damages caused by these vessels, which question would have been considered first had I not thought that what England ought to have done would be more clearly and easily seen after that I had stated what she had actually done.

It remains now to show that Great Britain ought and could have prevented the destruction by these vessels, or, in other words, that it was her duty and that she had the power to have done so.

The Queen's proclamation of 13th May, 1861, announced Her Royal determination to maintain "a strict and impartial neutrality in the contest between the Government of the United States of America and certain States styling themselves the Confederate States of America."

I have already shown that this proclamation recognized a state of war which did not in fact exist, certainly not on the ocean; that it was precipitate and unprecedented; that practically the only war vessels that preyed upon the commerce of the United States, from its date till the concessions granted by it were revoked in 1865, were vessels built, equipped and armed in and from the ports of Great Britain, and manned, and I might almost say owned by British subjects; that as the ports of the insurgents were practically closed by a blockade, or fell one after another into the hands of the Government, the United States repeatedly asked that the rights granted by this proclamation should be withdrawn, and that this request was refused, though it was proven in fact that the only vessels upon the seas which received the belligerent rights granted by that proclamation, and which were destroying the commerce of the United States, were these same British built, equipped and armed cruisers whose escape was acknowledged by Earl Russell to have been a scandal and reproach to English laws and English neutrality, and I have further shown that the circumstances of the final withdrawal of this proclamation condemned the English Government for having issued it.

I have further shown that the issuing of this proclamation and the failure to withdraw it has been held by Mr. Adams and Mr. Johnson, by Mr. Seward and Mr. Fish, and by Presidents Lincoln, Johnson and Grant to form part of the case against Great Britain, and that Great Britain in the Johnson-Clarendon treaty consented that it should be so considered.

But, admitting that Great Britain had a perfect right to decide whether or not she would recognize the insurgents as belligerents, and whether she would recall such recognition, no one will deny but that it was her duty to maintain the strict and impartial neutrality which she professed, so long as she continued to recognize the contending parties as belligerents, or until she became the ally of the one or the other.

A STRICT AND IMPARTIAL NEUTRALITY.

What, then, constitutes a strict and impartial neutrality?

We can go to no code to find an answer to this question, and must seek our answer in the history of nations and in the demands and concessions of neutrals and belligerents alike.

The same nation by its action has given different answers to this question, as it has or has not been a party to a war.

A belligerent has demanded that a neutral should give no aid to his enemy and the neutral has demanded that he should be allowed to continue his ordinary commercial relations with each belligerent.

A neutral would not be able to avoid giving some aid or comfort to belligerents unless all intercourse were stopped between neutrals and belligerents, and such a rule would make wars equally harmful to those at peace and those at war. Nor could a neutral give the same assistance to each belligerent, though he should offer the same to each, for each belligerent may seek different aid or have unequal opportunities of availing himself of it. So we find that neutrals have insisted that a strict impartiality consists in offering the same opportunities or privileges to each belligerent, and each belligerent has insisted so far as he could that a neutral should give no aid or comfort to his enemy. These neutral and belligerent claims have come in conflict, and as each nation has become neutral or belligerent its definition of a neutral's duty has changed.

The tendency of all these changes has been to allow greater rights to neutrals, till now it may be said that a nation may preserve a strict and impartial neutrality and allow its citizens to carry on all their usual business of trade and commerce with each belligerent, provided such acts do not in effect constitute the making of war from neutral territory, all this of course subject to danger of capture and condemnation.

The neutral can carry on commerce as before, he can sell arms and munitions of war to either belligerent and it has even been held that he can send to a belligerent port for sale an armed vessel, provided that at the time of sending he had no intention other than to send her there as a mere commercial venture.

The belligerent has his rights also. He can search neutral ships on the high seas, and can capture and condemn neutral property, provided it is of a character to increase the fighting power of his enemy, that is, contraband of war; or provided that he finds it on board a vessel attempting to enter a blockaded port.

The rule appears to be that neutral trade shall not be interfered with so long as it does not in effect constitute a hostile expedition from a neutral port and is incapable of becoming of advantage to a belligerent till it has reached his territory. If a belligerent would prevent such trade he must either capture the property on the ocean or seize it as it enters his enemy's port. Under this rule the neutral cannot give aid to one belligerent without giving to the other an opportunity to prevent it. Nor can that aid be made effective for war till it has reached the territory of the belligerent, at which point the other belligerent is supposed to be prepared to meet it.

This rule will not allow a neutral to sell to a belligerent in a neutral port a ship equipped or armed for war. For from the moment of leaving that port, such a vessel would become in the hands of a belligerent, an armed hostile expedition. An armed expedition, it would sail from a neutral port, really more dangerous to the belligerent than if it had been delivered in his enemey's port, for from such a port he would expect and might be prepared to oppose such an expedition, but from a neutral port he ought not to expect a hostile expedition, nor could he prevent such an expedition from escaping without blockading the neutral port. That a blockade would be necessary to prevent such an expedition, shows that such an expedition in itself would be an act of war. An act which necessitates a blockade of a neutral port, must be an act of war from that port.

To maintain a strict and impartial neutrality, a nation should not itself aid or allow its citizens to aid either belligerent by any means which are capable of aiding him before they reach his territory, and which are so intended to aid him, and which aid the other belligerent has no means of preventing.

If a nation itself should give such aid, it would cease to be neutral, and become an ally to one or the other belligerent. If it allow its citizens to give such aid, the acts of its citizens may involve it in war, for a belligerent has a right to demand that a nation shall abstain from such acts, and prevent its citizens from engaging in such acts, or itself be declared an open enemy. It therefore becomes the interest of neutral nations to see to it that their subjects abstain from those acts which may involve them in war against their will, and for this purpose nations have enacted domestic laws to prevent their subjects from making war when the nation is at peace. Such a law was first enacted in the United States on 5th June, 1794, afterwards amended in 1817, and passed in the form it now stands on 20th April, 1818. In Great Britain a law was passed for this purpose, on 3d July, 1819.

Whether a nation has a law for this purpose, or whether that law accomplishes its objects, constitutes no part of the question of what is its international duty as a neutral to a belligerent, though it may form a part of the question as to its liability for neglecting or failing to perform such duty.

The Queen's proclamation of neutrality having announced that she had determined to maintain a strict and impartial neutrality, charged all her loving subjects to do the same, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, and then reciting the act of 3d July, 1819, the 7th section of which declares certain penalties for those of her subjects as shall "equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out or arm, or procure to be equipped, furnished, fitted out or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out or arming, of any ship or vessels with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, &c., as a transport store-ship, or with intent to cruise or commit hostilities against any prince, &c., with whom Her Majesty shall not then be at war," she strictly commanded them not to do anything contrary to the provisions of that act under pain of the penalties therein imposed, and declared that such persons would in no wise procure protection from her against any liabilities or penal consequences, but would incur her high displeasure.

The English Foreign Enlistment Law is here shown to have been used as a means to enable Great Britain to maintain a strict and impartial neutrality.

THE DUTY OF A NEUTRAL AS SHOWN BY THE HISTORY OF NEUTRALITY LAWS.

The provisions and history of the laws passed in the United States and Great Britain for this purpose serve in a great degree to show what is the duty of the nation that would be neutral.

Mr. Abbott, now Lord Tenterden, Secretary of Her Majesty's Joint High Commission, prepared a very full statement of the circumstances under which the neutrality laws in each country were passed, which is given in the volumes published by the State Department to which I make direct reference.

The history of such legislation, as far as it relates to the building, equipping and arming of vessels, may be said to begin in the year 1793, for before that time neither the United States nor Great Britain had any such law.

The duty of a neutral nation was then, as now, to maintain a strict and impartial neutrality, but down to that time that duty had not been well defined, or had been so violated that I may almost say that all great naval wars had in fact involved all great commercial nations.

HISTORY OF THE UNITED STATES NEUTRALITY LAWS.

In 1793 France declared war on England and Holland. Remembering recent events, the sympathy of the United States was with France and against England. Washington, however, was determined that the United States should not become involved in the war, and to prevent such a result he also determined that its citizens should maintain a strict and impartial neutrality.

Vol. 4, p. 94. The proclamation of neutrality was dated 22d April, 1793. The preamble recites that "*the duty* and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers." After declaring that it was for the interest of the United States to be neutral, and warning the citizens, he adds: "I have given instructions to those officers to whom it belongs to cause prosecutions to be instituted against all persons who shall, within the cognizance of the courts of the United States, *violate the law of nations with respect to the powers at* war or any of them."

Here he recognizes a *duty and a power* to enfore a strict neutrality outside of any statute and by the laws of nations.

Now we go on to see what was found to be violations of a strict neutrality.

Some United States citizens did not regard the injunction of the proclamation, and fitted out privateers from United States ports. M. Genet, the French minister, filled out a blank commission with their names, and they cruised and made prizes of English merchantmen. Against such acts Mr. Hammond, the English Minister, remonstrated. He says that he "*conceives them to be breaches of that neutrality which the United States profess to observe, and direct contraventions of the proclamation* which the President issued on the 22d of last month. Under this impression he doubts not that the executive government of the United States will pursue such measures as to its wisdom may appear the best calculated *for repressing such practices in future, and for restoring to their rightful owners any captures which these particular privateers may attempt to bring into any of the ports of the United States.*"

Vol. 4, p. 95.

The English minister here recognizes a duty to prevent the building and equipping of armed vessels in neutral ports; a duty to take measures to prevent such acts in future; a duty to punish the persons who have fitted out these vessels, and a duty to compensate the parties injured by them.

Mr. Jefferson, then Secretary of State, replied that "the practice of commissioning, equipping and manning vessels in American ports to cruise on any of the belligerent parties *was equally and entirely disapproved,* and that the Government would take *effectual measures* to prevent a repetition of it." The request for the restoration of prizes was not then answered.

Vol. 4, p. 95.

Soon after this one Gideon Henfield, of Salem, Massachusetts, was arrested. The Democratic party favored the French, and asked by what laws he was to be tried. What if he had violated the President's proclamation, they said, the Executive could make no law.

To show what was then thought to be the law before any neutrality act was in existence, I quote from an opinion of John Jay, Chief Justice of the Supreme Court of the United States, delivered to the grand jury empaneled at Richmond to examine similar cases.

After a long argument to show the jurisdiction of the United States courts, he says:

"From the observations which have been made, this conclusion appears to result, viz: that the United States are in a state of neutrality relative to all the powers at war, and that it is *their duty*, their interest, and their disposition to maintain it; that, therefore, *they who commit, aid, or abet hostilities against those powers, or either of them, offend against the laws of the United States, and ought to be punished, and consequently that it is your duty*, gentlemen, to inquire into and present all such of those offenses as you shall find to have been committed within this district."—[Wharton's State Trials of U. S., p. 56.]

In the case of Henfield, Judge Wilson, with whom were Judges Iredell and Peters, charged the grand jury, "that a citizen who, in *our state of neutrality*, and without the authority of the nation, takes a hostile part with either of the belligerent powers, violates thereby his duty and *the laws of his country*, is a position so plain as to require no proof, and to be scarcely susceptible of a denial."

An indictment was returned against Henfield, charging him with committing *an act of hostility against the subjects of a power with whom the United States were at peace.* At the trial Judge Wilson instructed the jury: "*It is the joint and unanimous opinion of this court that, the United States being in a state of neutrality relative to the present war, the acts of hostility committed by Gideon Henfield are an offense against this country, and punishable by its laws.* It has been asked by his counsel, in their address to you 'Against what law has he offended?' the answer is that *as a citizen of the United States he was bound to act no part which could injure the nation; he was bound to keep the peace in regard to all nations with whom we are at peace. This is the law of nations; not an ex post* *facto law, but a law that was in existence before Gideon Henfield existed."*

It appears from the evidence that Henfield was an American citizen, and that he had acted as prize master on board a French privateer, but the jury, either, as Chief Justice Marshall thought, influenced by party zeal or by sympathy, or doubt of Henfield's guilty intent, as thought Mr. Jefferson, acquitted the prisoner. Washington thought this verdict of so much importance, as tending to disturb the peace of the country, that he gave it as one reason for desiring to call an extra session of Congress. This trial took place in July.

August 3d, the Cabinet returned an answer to some questions proposed to them by the President, giving their answer in the form of rules, from which I extract two:

> "*The original arming and equipping of vessels in the ports of the United States, by any of the belligerent parties for millitary service, offensive or defensive, is deemed unlawful.*
>
> "*Equipment of vessels in the ports of the United States which are of a nature solely adapted for war is deemed unlawful.*"

The next day Mr. Hamilton sent instructions to the collectors of customs directing them what course to take in order to prevent and punish such unlawful equipments, and saying that the rules had been adopted by the President as "deductions from the laws of neutrality as established and received among nations."

Notice this instruction:

> "No armed vessel which has been or shall be *originally fitted out* in any port of the United States, by either of the parties at war, is henceforth to have asylum in any district of the United States."

See also what degree of diligence was required:

> "The President desires me to signify to you his most particular expectation that the instructions contained in this letter will be executed with the greatest vigilance, care, activity, and impartiality. Omissions will tend to expose the Government to serious imputations and suspicions, and proportionably to commit the good faith and peace of the country, objects of too much importance not to engage every proper exertion of your zeal."

On 7th August, Mr. Jefferson demanded compensation or restitution from M. Genet of the prizes made by privateers fitted out in the United States ports, and informed him that the United States "*will not give asylum therein* to any which shall have been at any time so fitted out, and *will cause restitution* of all such prizes as shall be hereafter brought within their ports by any of the said privateers."

On the 5th September, Mr. Jefferson wrote Mr. Hammond that "the President contemplates *restitution* or *compensation* in the cases before the 7th of August; and after that date *restitution, if it can be effected by any means in our power.*"

The 7th of August was the day on which the United States informed M. Genet that privateers could not enter and prizes would be seized.

Congress met on the 3d December, and to them the President, after stating what means he had taken to carry out a strict neutrality, said:

> "It rests with the wisdom of Congress *to correct, improve or enforce* this plan of procedure, and it will probably be found *expedient to extend the legal code and jurisdiction of the courts of the United States to many cases which, though dependent upon principles already recognized, demand some further provisions.*
>
> "When individuals shall, within the United States, array themselves in hostility against any of the powers at war, or enter upon military expeditions or enterprises within the jurisdiction of the United States, or *where penalties on violations of the law of nations may have been indistinctly marked or are inadequate, these offenses cannot receive too early and close an attention, and require prompt and decisive remedies.*"

Here then we find the President making seizures without any express statute and paying damages for losses occasioned by vessels equipped when he had no law, and when Congress met calling upon it to give him additional powers, where those that he had were indistinctly marked or inadequate.

On 5th June, 1794, after a severe struggle in Congress, the first neutrality law of the United States was passed.

It established, among other things, certain penalties to any person who should fit out and arm or attempt to fit out and arm or procure to be fitted out or armed or attempt or be knowingly concerned in the furnishing, fitting out and arming of any ship or vessel with intent that such ship or vessel should be employed in the service of any foreign state to cruise or commit hostilities against another state with which the United States should be at peace.

Notice that this law provided for the punishment of the very acts which President Washington, his Cabinet and the Courts had previously sought to prevent in accordance with their admitted duty under the principles of international law, before any particular legislation had been passed for that purpose; that Mr. Hammond, the English Minister, had declared that such acts were breaches of neutrality, and had demanded that they be prevented in the future, that the offending vessels be punished, and that compensation be made for the damages occasioned by them.

The United States neutrality law was asked by Washington and enacted by Congress, to give to the executive the means of enabling the United States to maintain "a strict and impartial neutrality." Congress in effect said as did Judge Wilson, "a citizen of the United States is bound to act no part which can injure the nation. He is bound to keep the peace in regard to all nations with whom we are at peace. *This is the law of nations*, not an *ex post facto* law," and now we pass this law to impower the President to force the citizens to do what it is their duty to do, and what it is the duty of the United States to compel them to do.

COMPENSATION GIVEN TO BRITISH SUBJECTS BY TREATY OF 1794.

By the treaty between the United States and Great Britain concluded by Mr. Jay in 1794 there was a provision for the appointment of commissioners to consider, among other things, the "compensation to be awarded in cases of complaints of His Majesty's subjects that in the course of the war they have sustained loss and damage by reason of the capture of their vessels and merchandize taken by vessels originally armed in ports of the United States, where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, 5th September, 1793."

So the United States restored prizes and paid compensation to British subjects for damages caused by cruisers fitted out in their ports at the time when they had no neutrality law.

MIRANDA EXPEDITION AND OTHER VIOLATIONS OF NEUTRALITY COMPENSATED FOR.

In 1806, Miranda succeeded in fitting out an expedition at New York against Caracas.

President Jefferson informed Congress that he had taken "measures for preventing and surprising this enterprise for seizing the vessels, arms, and other means provided for it, and for arresting and bringing to justice its authors and abettors" and justifies his course by adding—"*It was due to that good faith which ought ever to be the rule of action in public as in private transactions.*"

Mr. Jefferson in a private letter aferwards said: "We never had the slightest intention or suspicion of his (Miranda) engaging men in his enterprise until he was gone."

The destruction by this expedition formed part of the claims of Spain against the United States which were presented and satisfied in the treaty of 1819, between these nations. In that treaty in consideration of certain agreements by the United States, Spain renounced all claims for "injuries caused by the expedition of Miranda," and "all claims of Spanish subjects, upon the Government of the United States arising from unlawful seizure at sea or within the ports and territorial jurisdiction of the United States."

Citizens of Spain also suffered to a considerable extent from privateers fitted out from various ports of the United States contrary to the law of nations and to the laws of the United States.

The United States had failed to prevent these vessels from escaping, and when the claim for damages by them, as presented by the Spanish minister, showed that the United States officers had been negligent in the matter it was agreed that the claims should be compensated for, and provision was made accordingly in the treaty of 1819.

Here, again, we find the United States paying for damages because they had failed to maintain a strict and impartial neutrality and had allowed privateers to escape from their ports contrary to their duty.

The Spanish minister maintained the right of Spain to damages in these words:

"The right of Spain to an adequate indemnity for all spoliations committed by these privateers or pirates on the Crown and subjects of His Catholic Majesty is undeniable."

Therefore, the United States made payment for damages occasioned by her failure to compel her citizens to preserve a strict and impartial neutrality.

THE UNITED STATES LAW AMENDED AND POWER GIVEN TO SEIZE AND DETAIN VESSELS UNDER CIRCUMSTANCES INDICATING STRONG PRESUMPTION OF AN INTENDED BREACH OF THE LAW.

In 1816, the citizens of the United States sympathizing very strongly with the revolutionary movement in South America against Portugal, violations of the neutrality of the United States were attempted, and the law of 1793 was not found to be effective to prevent them in all cases. The diplomatic representative of Portugal wrote Mr. Monroe, then Secretary of State, saying: "What I solicit of him, (the President) is the proposition to Congress of such provisions by law as will prevent such attempts for the future.',

Only six days later, Mr. Madison, then President, addressed a message to both Houses of Congress in the following words:

Adams to Russell, 20 May 1865, v. 3 p. 542.

> "It is found that the existing laws have not the efficacy necessary *to prevent violations of the obligations of the United States as a nation at peace toward belligerent parties*, and other unlawful acts on the high seas, by armed vessels equipped within the waters of the United States. With a view to maintain more effectually the respect due to the laws, to the character, and to *neutral and pacific relations* of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite *for detaining vessels actually equipped or in course of equipment*, with a warlike force, within the jurisdiction of the United States; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions proper for the cases of merchant vessels furnished with the defensive armament usual on distant and dangerous expedititons, and of a private commerce in military stores permitted by our laws, and which *the law of nations* does not require the United States to prohibit.

The precise points which he desired to have incorporated into a statute are specified in a note from the Secretary of State, Mr. Monroe to Mr. Forsyth, Chairman of the Committee on Foreign Relations. They are these:

> "I have now the honor to state that the provisions *necessary to make the laws effectual* against fitting out armed vessels in our ports for the purpose of hostile cruising seem to be—
>
> "1st. That they should be laid under bond not to violate the treaties of the United States under the *law of nations*, in all cases where there *is reason to suspect* such a purpose *on foot*, including the cases of vessels *taking on board arms and munitions of war, applicable to the equipment and armament of such vessels subsequent to their departure.*
>
> "2. To invest the collectors, or other revenue officers where there are no collectors, with power to seize and detain vessels under *circumstances indicating strong presumption of an intended breach of the law*, the detention to take place until the order of *the Executive*, on a full representation of the facts had thereupon, can be obtained.
>
> "The existing laws do not go to this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive when there is reason to suspect an intention to commit the offense. *They rest upon the general footing of punishing the offense merely* where, if there be full evidence of the actual perpetration of the crime, the party is handed over, after trial, to the penalty denounced."

The legislation desired by President Madison and recommended by Mr. Monroe was enacted by Congress in 1817, in a temporary act, and finally put into permanent legislation on 3d April, 1818.

This law, in short, added the temporary act of 1817 to the act of 1794, and is the present neutrality law of the United States.

I quote the 10th and 11th sections of this act, which were in substance the provisions which the President and Secretary of State had asked.

> "Sec. 10. *And be it further enacted*, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient securities, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people with whom the United States are at peace.
>
> "Sec. 11. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively authorized and re-

quired *to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board or other circumstances shall render it probable that such vessel is intended to be employed by* the owner or owners to cruise or commit hostilities upon the subjects, citizens or property of any foreign state, or of any colony, district or people with whom the United States are at peace, *until the decision of the President* be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act."

It is important to notice these provisions, and to remember that they were added to our statute "with a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States." These provisions direct the detention of a vessel when any "circumstances" render it probable "that the law is to be violated."

These provisions do not exist in the English neutrality law, and we have already seen that the Florida and Alabama escaped long after circumstances rendered it "probable" that they were to be employed to cruise or commit violations against the United States. We shall hereafter see that the United States desired that similar provisions should be added to the laws of Great Britain, but that she refused; and further, we shall see that after our rebellion had been crushed, and the "late Union" had been found never to have been dead, the commissioners of Her Majesty recommended changes in the English law which in effect added to it these two sections of the United States law.

THE USE OF ALL THE MEANS IN ITS POWER CLAIMED BY THE UNITED STATES TO RELIEVE FROM LIABILITY FOR DAMAGES.

About the year 1814 Artigas, a leader of some small bands gathered from the discontented inhabitants of Spanish America had made war upon Brazil and the Portuguese.

Several vessels were fitted out in Baltimore, and sailing under the flag of Artigas captured Portuguese merchantmen. For these damages Portugal presented claims in 1816, 1822, and finally in 1851.

To these claims this answer was given:

> "The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by capture, over which the United States have neither control or jurisdiction."—[John Q. Adams to Portuguese minister, 14 March, 1818, Ex. Doc., 1851–'52, vol, VI, Doc. 53.]

We have but seen how the United States law was amended at the suggestion of the Portuguese minister. This extract from a letter of Mr. Adams then Secretary of War, to Gen. Dearborn then Minister to Portugal, written in 1822, will show what the United States considered within its power.

> "To these complainants every attention compatible with the rights of the citizens of the United States, and with the law of nations was paid by the government. The laws for securing the faithful performance of the duties of neutrality were revised and enforced. Decrees of restitution were pronounced by the judicial tribunals in all cases of Portuguese captured vessels brought within the jurisdiction of the United States, and all the measures within the competency of the Executive were taken by that Department of the Government for repressing the fitting out of privateers from our ports and the enlistment of our citizens in them."—[Senate Doc., 1823 and 1824. Vol. III, p. 77.]

But even if the United States did not in this case use all the means in its power to prevent the escape of the Artigas privateers the ground on which the Government refused to pay the claims, for damages by these vessels really establishes the principle as previously conceded by the United States to Great Britain and Spain.

This is what was reported by the Senate Committee on Foreign Relations in reference to the Artigas claims in June, 1818:

> "The fitting out of vessels for privateering, &c., if not checked by all the means in the power of the Government, would have authorized claims from the subjects of foreign Governments for indemnification at the expense of this nation for captures made by our people, by vessels fitted out in our ports, and, as could not fail to be alleged, countenanced by the very neglect of the necessary means of suppressing them."

This precedent cannot, therefore, be used against the Alabama claims unless it can be shown that Great Britain used all the means in her power to prevent the escape of the Alabama and other cruisers.

THE UNITED STATES AMENDS HER NEUTRALITY LAW TO PREVENT HER CITIZENS FROM AIDING GREAT BRITAIN'S REBELS IN CANADA.

In 1838 a rebellion broke out in Canada. The President recommended some special legislation to Congress to enable the United States to maintain a strict and impartial neutrality, and Congress passed a temporary act which provided for the seizure and detention "of any vessel or vehicle, and all arms or munitions of war, about to pass the frontier of the United States for any place within any foreign state or colony conterminous with the United States, where the character of the vessel or vehicle and the quantity of arms and munitions or other circumstances shall furnish probable cause to believe that the said vessel, &c., are intended to be employed by the owner or owners, or any other person or persons, with his or their privity in carrying on any military expedition or operation within such territory, and providing that nothing in this act shall be construed to extend to or interfere with any trade in arms or munitions of war conducted, in vessels by sea, with any foreign port or place whatsoever."

Vol. 4, p. 62.

In this act the principle that I have before stated is most clearly recognized. It provides that arms about to pass the boundary line between neutral and belligerent can be seized on mere suspicion that they are intended to be used for any military expedition within the territory of that belligerent, while the right to send such arms and munitions from a neutral port to a belligerent port is particularly recognized as lawful, subject of course to the rights of capture and condemnation.

In the one case the arms might be of great injury to one belligerent immediately after they passed the boundary line, while in the other case they could not be any advantage to him till the other belligerent had had an opportunity to capture them. In the one case a hostile expedition would really proceed from neutral territory, and in the other the neutral would only engage in a commercial adventure, running all the risks of capture.

We shall hereafter see how Mr. Seward, referring to the circumstances under which this law was passed, asked in 1861 that England amend her law.

GREAT BRITAIN ADMITS THE SUPERIORITY OF UNITED STATES LAW, AND ASKS THAT IT BE VIGOROUSLY ENFORCED.

In 1854, England and France declared war against Russia, and in February of that year Mr. Buchanan, then our Minister to London, had an interview with the Earl of Clarendon. The subject of conversation being the course that each Government should adopt in their relations with each other, the one as a belligerent and the other as a neutral. Referring to this interview, Mr. Buchanan writes to Mr. Marcy:

> "Lord Clarendon referred to our neutrality law (of April 20th, 1818) *in terms of high commendation and pronounced it superior to their own, especially in regard to privateers.* They are evidently apprehensive that Russian privateers may be fitted out in the ports of the United States to cruise against their commerce, though in words his lordship expressed no such apprehension. *Would it not be advisable, after the war shall have fairly commenced, for the President to issue his proclamation calling upon the official authorities to be vigilant in executing the law?*"

After this conversation, Lord Clarendon sent to Mr. Crampton, then the English Minister at Washington, instructions to give official notice of the war and of the belligerent rights that would be claimed by England and France. He also had in mind the superior neutrality law of the United States, and desiring that the United States would faithfully execute the same, he sent Mr. Crampton instructions to that effect, and in accordance therewith Mr. Crampton writes Mr. Marcy on 21st April:

"Her Britannic Majesty's Government entertains the confident hope that the United States Government will give orders that—" and also "that the citizens of the United States shall vigorously abstain from taking part in the armaments of this nature" (privateers) "*or in any other measure opposed to the duties of a strict neutrality.*"

To this letter Mr. Marcy replied on 28th April:

Vol. 4, p. 66.

"The undersigned is directed by the President to state to Her Majesty's Minister near this Government that the United States, while claiming the full enjoyment of their rights as a neutral power, will observe the strictest neutrality towards each and all the belligerents. The laws of this country impose severe restrictions not only upon its own citizens, but upon all persons who may be residents within any of the territories of the United States, against equipping privateers, receiving commissions or enlisting men therein, for the purpose of taking a part in any foreign war. It is not apprehended that there will be any attempt to violate these laws; but should the just expectation of the President be disappointed, *he will not fail in his duty to use the power with which he is invested to enforce obedience to them.* Considerations of interest and *the obligations of duty* alike give assurance that the citizens of the United States will in no way compromit the neutrality of their country by participating in the contest in which the principal powers of Europe are now unhappily engaged."

In 1855, the Government redeemed this pledge of Mr. Marcy to Mr. Crampton, and these are the circumstances:

THE CASE OF "THE MAURY."

Vol. 4, pp. 53–63.

On the 11th of October, Mr. Crampton having information from the British Consul at New York that there was good reason to believe that the Bark Maury was being fitted out at New York for the service of Russia, and with the intention of destroying the Cunard Steamers, he wrote to Mr. Marcy enclosing several depositions and saying that they stated circumstances of "so suspicious an appearance" that he felt it his duty to birng the same to the notice of the Government of the United States.

The letter of Mr. Cushing, Attorney-General, to the Secretary of State, dated 22nd October, 1855, gives the history of the case sufficiently for our purpose:

Cushing to Marcy, 22 Oct., 1855, v. 4, p. 59.

"Sir:—I have the honor to communicate to you, the history and result of the proceedings in the case of the Bark Maury of New York.

"In consequence of the British Minister's communication to you of the 11th instant, and which you referred to me on the day of its receipt (the 12th) brief instructions were, on the same day, dispatched by telegraph to Mr. McKeon, attorney of the United States for the Southern

District of New York, and more detailed instructions by mail the next day, requesting him to make immediate inquiry on the subject of the Maury, to consult thereon with Mr. Barclay, the British Consul at New York, and *if sufficient probable cause appeared*, to institute the proper process against her in the District Court.

"These instructions were induced by the documents communicated by the British minister, copies of which were transmitted by me to Mr. KcKeon.

"The documents consisted of—

"1. An affidavit by Mr Barclay, setting forth that he believed, and expected to be able to prove, that the Maury was built, fitted out and armed, with intent to be employed by the Russian Government to cruise against the subjects of Great Britain, and that he stood ready to bring forward his proof thereof.

"2. An affidavit of one Cornell, purporting to be a police officer in New York, who professes to describe the build, equipment, armament, and cargo of the Maury, and concludes with expression of belief that she was built, armed and equipped by the Russian Government for war purposes against Great Britain.

"3. An affidavit of one Craft, also purporting to be a police officer in New York, who speaks more guardedly, briefly describes the visible armament of the Maury, repeats hearsay as to her freight, and expresses belief that she is a vessel of war.

"4. Finally the affidavit of Mr. Edwards, a counsellor-at-law in New York, understood to be counsel for the British Consul, who says that he verily believes that the Maury was built, equipped, and loaded by and for the Russian Government to be used in the present war against the vessels and subjects of Great Britain.

"Mr. Edwards then proceeds to state that a person who, he believes, has been in the pay of the Russian Government, gave him a full explanation of the armament and destination of the Maury. He, Mr. Edwards, 'gathered from the person referred to' that the plan of the Maury was to attack and capture one of the Cunard British mail steamers, arm the prize, and after being joined by other vessels of the same construction, built, and fitted out by the Russian Government, to proceed to attack the 'British possessions" in the East Indies.

"*The representations concerning the Maury which Mr. Edwards thus adopted, were so grossly improbable on their face, and had so much the air of a contrivance to impose on him, and through him on the British Consul, as to produce some hesitation in my mind as to the propriety of instituting process in the case; but the specific and positive statements of Cornell and Craft, especially the former, as to the build, rig, armamant, and imputed contents of the vessel, seem to me, on the whole, to justify and require an examination of the case, at the hazard of possible inconvenience to innocent parties.*

"*To make such an examination effectual, it was necessary to libel the Maury, and place her in charge of the marshall.*

"I have now received from Mr. McKeon report of the result of the investigations.

"It appears that the Maury was owned in part by Messrss. A. A. Low & Brothers, who have afforded satisfactory information as to her construction, character and destination.

"They make affidavit that she was built and equipped for trade with China, having in addition to the ordinary armament of vessels in that business, only two deck guns, deemed requisite on account of the increase of piracy in the seas of China.

"It further appears by these explanations that the statement made as to the guns and munitions of war and extra spars on board the Maury was inaccurate, to use the mildest admissable expression; that the surmises as to the illegality of her character are not substantiated by proof; and that she is in fact advertised for general affreightment, and receiving cargo destined for Shanghai.

"Neither Mr. Barclay nor Mr. Edwards brought forward any evidence to contradict these facts; on the contrary, Mr. Edwards has, in a letter addressed to Mr. McKeon, expressed his conviction of the propriety of dismissing the libel, which is also recommended unreservedly by Mr. McKeon.

"Under these circumstances it affords me pleasure to enable you to give assurance that the Cunard mail steamers may continue to enter and leave our ports without apprehension of being captured by the Maury and converted into Russian men-of-war, for the prosecution of hostilities in the East Indies.

"I annex copies of Mr. McKeon's report of the affidavits submitted by parties interested in the Maury, or in her lading, and of the letter of Mr. Edwards to Mr. McKeon.

I am, very respectfully,

C. CUSHING."

On the 11th October, at Washington, the British Minister had called Mr. Marcy's attention to the vessel. On the 13th she was detained. On the 17th, she was libelled. On the 19th, the counsel for the English Government said: "It would be but fair towards the owners to lift the libel." And the vessel was released, and on the 23d, the British Consul apologized in the papers for having given the formal information.

Compare the promptness in this case with the delays in the case of the Florida and Alabama.

HISTORY OF THE ENGLISH NEUTRALITY LAW.

The English Foreign Enlistment Act was passed on 3d July, 1819. Spain, in 1819, was endeavoring to put down the rebellion of her colonies in South America. The sympathies of the liberals in England were with the colonies. Some law was needed to enable the Government to preserve its neutrality, and it was decided to present an act of a similar nature to the act of the United States.

The Bill was introduced by Mr. Canning on the 10th of June, 1819, in an eloquent speech, in the course of which he said:

> "It surely could not be forgotten that in 1793 this country complained of various breaches of neutrality (though much inferior in degree to those now under consideration,) committed on the part of subjects of the United States of America. What was the conduct of that nation in consequence? Did it resent the complaint as an infringement of its independence? Did it refuse to take such steps as would insure the immediate observance of neutrality? Neither. In 1794, immediately after the application from the British Government, the legislature of the United States passed an act prohibiting under heavy penalties, the engagement of American citizens in the armies of any belligerent power. Was that the only instance of the kind? It was but last year that the United States passed an act by which the act of 1794 was confirmed in every respect, again prohibiting the engagement of their citizens in the service of any foreign power, and pointing distinctly to the service of Spain or the South American provinces."

The Attorney General, Sir Samuel Shepherd, moving to bring in the bill, said:

> "The second provision of the bill ('in regard to the equipping and arming of vessels') was rendered *necessary* by the consideration that assistance might be rendered to foreign states through the means of the subjects of this country, not only by their enlisting in warfare, but also *by their fitting out ships for the purpose of war.* It is *extremly important for the preservation of neutrality* that the subjects of this country be prevented from fitting out any equipments to be employed in foreign service."

Lord Castlereagh said:

> "*It is a duty we owe to Spain and to our honor, while we profess to be at peace with her, not to allow ships of war to be equipped in our ports or armaments to sail from them against her.*"

There was considerable opposition to the bill, and a long debate in the House of Commons at each reading. The opposition headed by Sir James Mackintosh, maintained that it was not inconsistent with neutrality to allow soldiers to enlist, or war vessels to be equipped, in a neutral port. Mr. Canning, Sir William Scott, Doctor Phillimore, and others supported the bill. They met the issue presented by its opponents with arguments from principle and authority. The bill passed by a majority of sixty-one.

This debate shows that the English act like that of the United States was passed for the express purpose of enabling the Government to do its duty, and the same facts will also appear from a debate that occurred on a motion to repeal this act.

In 1823 France was threatening Spain. Lord Althorp moved a repeal of the Foreign Enlistment Bill on the ground that it was not necessary to a strict neutrality. Lord Folkstone seconded the motion, because he thought that there would be then an opportunity for Englishmen to fight for the liberties of Spain. Two-thirds of the House considered that a repeal of the bill would be a breach of neutrality and so the bill remained on the statute book.

In closing a speech against the repeal, Mr. Canning said:

> "If war must come, let it come in the shape of satisfaction to be demanded for injuries, of rights to be asserted, of interests to be protected, of treaties to be fulfilled. But, *in God's name, let it not come in the paltry, pettifogging way of fitting out ships in our harbor to cruise for gain.*"

The opinion of Grotius and Bynkershoek were used in debate to support each side of this question; but a question which those authors left doubtful the English House of Commons settled, voting that their duty to other nations and to themselves forbade English subjects from fitting out armed vessels to cruise against nations with which England was at peace.

Under the English neutrality law no seizures or detention of vessels fitted out in violation of it, were made till the seizure of the Florida at Nassau in June, 1862.

CONCLUSIONS FROM THE HISTORY OF THE UNITED STATES AND ENGLISH NEUTRALITY LAWS.

The history of the neutrality laws of England and the United States, establish the following conclusions:

First. It is the duty of a neutral nation to maintain a strict and impartial neutrality towards each belligerent.

Second. This duty is fixed and determined by the law of nations and not by any local statute.

Third. It is the duty of a neutral nation to prevent its citizens from equipping, furnishing, fitting out, or arming within its territory any ship or vessel with intent that such ship or vessel should be employed in the service of a belligerent.

Fourth. Great Britain, Spain, Portugal and the United States have recognized the duty of a neutral nation to compensate for damages done to a belligerent by vessels built, equipped, and armed in neutral ports unless the neutral nation has used all the means in its power to prevent such damage.

Fifth. Among the means within the power of a neutral nation are the passage of proper acts for the prevention and punishment of violations of its neutrality within its territory and the amendment of such acts, if at any time they are shown to be ineffectual.

Sixth. The United States and Great Britain have each enacted laws for that purpose and for the particular purpose of preventing their citizens from equipping, furnishing, fitting out, and arming within their territory, any ship or vessel with intent that such ship or vessel should be employed in the service of a belligerent.

Seventh. At the time of the passage of these laws the duty of a neutral nation to pass and enforce them was clearly recognized and insisted upon.

Eighth. The United States law differs from the English law, in that it has an express provision authorizing the detention of vessels *suspected* of being equipped or armed for the use of a belligerent.

Ninth. This provision in the United States law was added at the request of a belligerent nation.

ENGLAND'S DUTY TO HAVE PREVENTED THE ESCAPE OF THE ALABAMA AND OTHER VESSELS ADMITTED.

It was the duty of England to have prevented the damages caused by the Florida, Alabama, Georgia and Shenandoah.

Beyond all doubt they each contributed a hostile expedition, originated, fitted out, equipped, armed and manned from her ports.

If a neutral is not bound to prevent such an expedition I can conceive of no expedition which she is bound to prevent. I do not propose to establish this position by reference to decisions of courts for I consider it to be admitted that such is a neutral's duty.

First, by the United States, who have paid Great Britain and Spain for damages occasioned substantially by such expeditions and who have enacted a law to prevent the same.

Second, by Great Britain, who has demanded and who has been paid for damages occasioned by substantially such expeditions proceeding from the United States and has also enacted a law to prevent the same.

Third, by the practical admission of Judge Lees on the trial of the Florida at Nassau, that Captain Hickley's evidence as to the construction and fitting of that vessel would have been conclusive if established before that vessel left Liverpool.

Fourth, by the final decision of Her Majesty's law officers to seize the Alabama.

Fifth, by this quotation from a letter of Earl Russell to Lord Lyons: "I admitted that the cases of the Alabama and Oreto were a scandal and in some degree a reproach to our laws."

Russell to Lyons, v. 1, p. 534.

Sixth, by his explanation of this admission given in the House of Lords on 16th February, 1864, in reply to the Earl of Carnaveran. These are his words:

Vol. 5, p. 528, 16 Feb. 1864, Hansard, v. 173, pp. 618, 635.

"Referring again to the Alabama, the noble Earl seems to be much shocked because I said that that case was a scandal, and in some sense a reproach upon British law. I say that here, as I said it in that despatch. I do consider that, having passed a law to prevent the enlistment of Her Majesty's subjects in the service of a foreign power, to prevent the fitting out or equipping, within Her Majesty's dominions, of vessels for warlike purposes, without Her Majesty's sanction. I say that, having passed such a law, in the year 1819, it is a scandal and a reproach that one of the belligerents in this American contest has been enabled, at the order of the Confederate government, to fit out a vessel at Liverpool, in such a way that she was capable of being made a vessel of war; that, after going to another port in Her Majesty's dominions to ship a portion of her crew, she proceeded to a port in neutral territory and there completed her crew and equipments as a vessel of war, so that she has since been able to capture and destroy innocent merchant vessels belonging to the other belligerent. Having been thus equipped by an evasion of the law, I say it is a scandal to our law that we should not be able to prevent such belligerent operations. I venture to say so much, because at the foreign office, I feel this to be very inconvenient if you choose to say as you might have said in former times, 'let vessels be fitted out and sold, let a vessel go to Charleston, and there be sold to any agent of the Confederate government,' I could understand such a state of things. But if we have a law to prevent the fitting out of warlike vessels, without the license of Her Majesty, I do say this case of the Alabama is a scandal and a reproach.

Seventh, by this further admission in a letter of Earl Russell to Mr. Davis; he writes:

Appleton's Annual Encyclopædia, 1864, p. 557.

"Nor can the frequent use of the word 'equip' in the sense of 'to furnish with everything necessary to a voyage' be held for a moment to limit its significance to the furnishing of a war vessel with everything which it might be possible to put upon her, or the ultimately putting of on her might be contemplated. Such a construction cannot be entertained for an instant. It is clear that a 120-gun ship might be equipped for war purposes with any fraction of her armament on board, although she might not be so powerful or so efficient as she would if she had the whole of it."

Eighth, by the seizure by the Government of the Alexandra, the Pampero and Lairds' rams.

Ninth, by the decision in the case of the Alexandra, and in the case of the Pampero.

Tenth, by the justification in Parliament, after a long debate, of the seizure of the rams, and that, too, after the final result of the Alexandra case had been known.

Eleventh, by the desire of Great Britain, in 1866, to unite with the United States in some treaty or domestic legislation which should cover such cases beyond all doubt.

Twelfth, as we shall hereafter see by the report of Her Majesty's commissioners, men most learned in international law, who from

1861 to 1865 had particularly considered the whole question of England's duty as a neutral; who, being duly authorized for the purpose, recommended to Parliament, in 1867, that it should amend the neutrality laws so that power would be given to the Government to seize any vessel, even while building, in regard to which there was any suspicion that she was to be used as the Florida, Alabama, Georgia and Shenandoah had been used.

DID ENGLAND USE ALL THE MEANS IN HER POWER TO PREVENT THE ESCAPE OF THE ALABAMA AND OTHER CRUISERS AND THE DAMAGE DONE BY THEM.

Considering it, then, to be established that England should have prevented the damage done by these vessels, I now come to consider whether she could have done so, that is, whether she used all the means in her power to do so, and I propose to consider whether she used all the means in her power to prevent the same.

First, by faithfully executing the laws which she had enacted for that purpose.

Second, by amending those laws when shown to be inefficient.

Third, by taking various proper and possible measures to prevent the damage by those vessels after they had once escaped.

SHE DID NOT USE ALL THE MEANS IN HER POWER UNDER THE LAW OF NATIONS AND HER OWN STATUTES.

Great Britain did not use all the means in her power to execute her neutrality law which, as we have seen, was passed to compel her citizens to refrain from doing acts which it was her duty to compel them to refrain from doing.

In the cases of the Florida and Alabama this neglect is clear.

In these two cases the Government refused to detain on any suspicious circumstances, claiming that under the laws they had no authority to do so.

Earl Russell writes Mr. Adams on 27th March, 1862: "I immediately directed that the Treasury and Customs Departments should be requested to take such steps as may be necessary to ascertain whether the Oreto is equipped for the purpose of making war on the United States, and, if *that fact can be proved*, to detain the vessel."

This letter was written more than a month after Mr. Adams had written him that he entertained little doubt that the intention was precisely that indicated in the letter of Consul Dudley, "the carrying on of war against the United States."

So in the case of the Alabama, no orders were given to seize till more than a month after Mr. Adams had notified him that she was "fitting out for the especial and manifest object of carrying on hostilities by sea."

On 21st July, Passmore swore that he had enlisted to serve on that ship, and had been told by the Captain that she "was going to fight for the Southern Government."

On 22d July, other sworn testimony was sent to the law officers of the Crown, but not till the 29th was any order given to seize.

The evidence afforded clearly established the existence of the intent to use the vessel for the purpose for which she was afterwards used.

The commissioners of customs both in the case of the Oreto and that of the Alabama, reported that it was evident they were ships of war, and as to the Alabama, that the builders could give no reliable information as to her destination. With such a report and with the statement and affidavits presented by Minister Adams, the vessel should have been seized. The law officers made themselves the jury instead of the prosecutors; they required a verdict before they would arrest.

Though their statute did not give express authority to seize, on suspicion, yet all the ordinary rules of criminal law required them to do so. An arrest on suspicion brings many a criminal to justice.

THE NEGLECT IN NOT PREVENTING THE ESCAPE OF THE FLORIDA AND ALABAMA, UNDER THE LAW OF NATIONS AND IN ITS STATUTES, MADE APPARENT FROM THE SUBSEQUENT ACTION OF THE ENGLISH GOVERNMENT.

The conduct of the Government in the case of the Alabama and Florida was distinctly condemned by their action in the case of the Alexandra and Lairds Rams, as will appear by reference to the facts in these cases as already set out, pp. 150, 162. In these cases the Government acted on a strong suspicion, and beyond all doubt they had reason to have equally strong suspicion against the Florida and Alabama for weeks before they sailed.

If it was right to seize the rams even before completed on the supposition that there was danger they would be forcibly taken from the dock of the Lairds without their consent and knowledge, then certainly the Florida and Alabama should have been stopped after Mr. Adams had stated that he had no doubt but that they were intended to make war upon the United States, and in the case of the Florida, offered to give more formal evidence and in the case of the Alabama actually given it.

The English Government cannot maintain that their action in the case of the rams was justifiable, and also maintain that they used all the means in their power to prevent the escape of the Florida and the Alabama. And yet the action of the Government in seizing the rams was justified by the result and by a decisive vote in the House of Commons on 23d February, 1864.

The debate was nominally on a motion calling for the correspondence between the Laird Bros. and the Government, but the discussion involved the justification of the action of the Government. This is what the Solicitor General said in justification:

Vol. 5, p. 496, 23 Feb. 1864. Hansard, vol. 173, pp. 955–1021.

> "We have done that which we should expect others to do for us, and we have done no more.
>
> * * * *
>
> "Circumstances came to the knowledge of the Government which excited grave suspicion as to the destination of the rams. On the Messrs. Laird volunteering to give information on the subject the Government intimated their readiness to receive it. Well, information was given, but I confess it was not satisfactory to the Government, and, so far from removing, it increased their suspicion. The Government had the depositions of sworn witnesses which confirmed those suspicions, and they felt it to be their duty to seize or detain the ships. * * *
>
> "The House will bear in mind that *it was not necessary, in order to justify the seizure, that the evidence should be sufficient to satisfy a jury; it was enough that the Government had a prima facie case, such as would induce a magistrate to remand a prisoner.*"

And now read very carefully what Sir Roundell Palmer, then Attorney General, said:

Vol. 5, p. 477, 23 Feb. 1864. Hansard. vol. 173, pp. 755–1021.

"I do not hesitate to say boldly, and in the face of the country, that the Government *on their own responsibility* detained them. They were prosecuting inquiries, which, though imperfect, left on the mind of the Government strong reasons for believing that the result might prove to be that these ships were intended for an illegal purpose, and that if they left the country the law would be violated and a great injury done to a friendly power. The Government did not seize the ships; they did not by any act take possession or interfere with them, but on their own responsibility they gave notice to the parties interested that the law should not be evaded until the pending inquiry should be brought to a conclusion, when the Government would know whether the inquiry would result in affording conclusive grounds for seizing the ships or not. If any other great crime or mischief were in progress could it be doubted that the Government would be justified in taking steps to prevent the evasion from justice of the person whose conduct was under investigation until the completion of the inquiry? In a criminal case we know that it is an ordinary course to go before a magistrate, and some information is taken of a most imperfect character to justify the accused's committal to prison for trial, the prisoner being remanded from time to time. And that course cannot be adopted in cases of seizing of vessels of this description. The law gives no means for that. And, therefore, it is that the Government, on their own responsibility, must act and have acted in determining that what had taken place with regard to the Alabama should not take place with respect to these ships, that they should not slip out of the Mersey and join the navy of the belligerent powers, contrary to our law, if that were the intention, until the inquiry in progress should be so far brought to a conclusion as to enable the Government to judge whether the ships were really intended for innocent purposes. or not. * * *

"The Government were determined that the inquiries which they were making should be brought to a legitimate conclusion, that it might be seen whether those inquiries resulted in evidence or not of the vessels being intended for the Confederates, and that in the mean time they would not permit the ends of justice to be baffled by the sudden removal of the ships from the river. * *

"I venture to say that a course more just or liberal could not well have been taken than this. * * *

"It is impossible that the case of the Government can now be brought before the House; but the Government have acted under a serious sense of their duty to themselves, to Her Majesty, *to our allies in the United States, and to every other nation, with whom Her Majesty is in friendship and alliance, and with whom questions of this kind may be liable hereafter to arise.* Under a sense of that duty they have felt that this is not a question to be treated lightly, or as one of no great importance. If an evasion of the statute law of the land was really about to take place, *it was the duty of the Government to use all possible means to ascertain the truth, and to prevent the escape of vessels of this kind to be used against a friendly power. It was their duty to make inquiries, and to act if there was a good ground for seizure,* taking care only to adopt that procedure, which was justified by the circumstances."

Here then, we find the Government law officers contending that it was the duty of the Government independent of any statute to prevent the escape of vessels of this kind and justifying a course of conduct which if pursued earlier would have saved the commerce of the United States from destruction.

This was a debate in which the Government maintained itself against considerable opposition. Sir Hugh Cairns, who had been the leading counsel against the Government in the Alexandra case and had just obtained a verdict that she should be released, made a very powerful speech reviewing the action of the Government. Beginning with the cases of the Florida and Alabama, he showed that the Government had changed its policy since the case of the Florida, and comparing a speech that Sir Roundall Palmer, as Solicitor General, had made in the House of Commons in 1863, with what he had just said as Attorney General, he spoke as follows:

Vol. 5, p. 492, 23 Feb. 1864, Hansard, v. 173. pp 955 1021.

"Last year I heard the Government on more than one occasion defend themselves against these claims, and I thought on very good grounds. I thought that the claims were most unfounded. I thought there was no pretense for alleging them. I accepted the defence of the Government. But what was that defence? The defence of the Government was this: 'You complain of the Alabama! Well, assume for a moment that at the time of her departure from England she had been guilty of a violation of the Foreign Enlistment Act, which we think doubtful; but, assume that she had, she was built under such circumstances, and with such speed, that no reasonable delligence on our part could have prevented her leaving.' But said the American Minister, 'Oh, yes; but I told you a considerable time before—I told you many weeks before—the reason that we had for suspecting her destination; and I gave you statements—some of them upon oath—which made it impossible but that any one should at all events feel a doubt whether that was not her destination.' 'Yes,' said the Government, 'but we have no law which enables us to interpose in a case of that kind. We cannot detain a ship, we cannot act upon suspicion. If you show us a case which enables us to seize, then we can seize and abide by the consequences, because the law enables us to do that;

but the law does not enable us to do what your American law may do,' and I believe does, 'it does not enable us to detain a ship merely upon circumstances of suspicion, in order to make inquiry. Therefore,' said the Government to the United States last year, 'your claims with regard to the Alabama are unfounded; for we did all that the law and constitution of the country allow us to do.' But what becomes of that now. What will you say to the American Minister now? Do not you suppose that the American Minister will come to you and say, 'You told me last year that unless you had had a case for seizure, and proof by proper evidence, you could not arrest a ship at all; that you could not detain her?' Although you admitted that the facts I brought before you created very great suspicion, you said that you could not seize the Alabama; therefore, you could not touch her. But look at what you did in September. For a whole month, you detained the steam rams in the Mersey, while, according to your own words, you were collecting evidence and endeavoring to see whether your suspicions were well founded. * * * *

"*I maintain that when the United States hold this language, either our Government must contend that what they did in September was unconstitutional, or they ought to have done the same with regard to the Alabama, and are liable.*"

Now the United States adopt the language of Sir Hugh Cairns, and the House of Commons having sustained the course of the Attorney General in detaining the rams on suspicion, we are happy to have him as authority to establish the liability of England for the Alabama claims, we shall find Sir Hugh Cairns again a good authority, when in 1867 he, together with Sir Roundell Palmer and others, recommended to parliament an amendment to the neutrality law which should enable the law officers to seize future Floridas, Alabamas and rams, and hold them till some future Laird "shall establish to the satisfaction of the court that the ship was not and is not being built, equipped, fitted out or armed" against a nation with whom Her Majesty may be at peace.

By recommending such a provision as this, Sir Hugh Cairns in effect said, that though in debate he had contended that the Government, under the existing laws, had not power to seize a vessel on suspicion, yet that he was satisfied that it should have such power in order to enable it to prevent violations of a strict and impartial neutrality.

Having "thus established the liability of Great Britain for the losses by the several cruisers fitted out in her ports, by showing from her own acts and from the acknowledgments of her own law officers that she did not use all the means in her power to prevent the escape of these cruisers, and further by quoting Her Majesty's law officers who said that "it was the duty of the Government *to use all possible means* to ascertain the truth and *to prevent the escape* of vessels of this kind," I pass on to consider whether Great Britain did all she could to prevent the escape of these vessels, by changing her law so that it would enable the government more effectually to maintain a strict and impartial neutrality.

THE UNITED STATES SUGGEST IN 1861, AN AMENDMENT OF ENGLISH NEUTRALITY LAW, AND EARL RUSSELL PROMISES THE SAME IF FOUND NECESSARY.

We have seen how the first neutrality law of the United States was passed during the war between Great Britain and Spain to prevent our citizens from fitting out privateers against Great Britain; that it was afterwards amended on the suggestion of the Minister of Portugal to enable us more effectually to save the commerce of that country from privateers fitted out in our ports, and that again in 1838, the United States passed a special law to prevent hostile expeditions from proceeding from the United States into Canada. Our Government having so faithfully enacted laws necessary to maintain a strict neutrality whenever they were called for, it was not unreasonable that Mr. Seward, soon after the Queen's proclamation, remembering that the neutrality law of England contained no clause especially authorizing the seizure of vessels *on suspicion* that they were to be fitted out against a friendly power, wrote on 7th September, 1861, to Mr. Adams that he did not consider that it would be disrespectful for him to remind Earl Russell that when in 1838, a civil war broke out in Canada, a part of the British dominions adjacent to the United States, the Congress of the United States passed and the President executed a law which effectually prevented any intervention against the Government of Great Britain, in those internal differences by American citizens whatever might be their motives, real or pretended, whether of interest or sympathy, and make to him the suggestion that the British Government might judge for itself whether this fact was suggestive of any measures on the part of

Seward to Adams, 7 Sept,, 1861, v. 1, p. 660.

Great Britain that might tend to preserve the peace of the two countries. Mr. Adams communicated the substance of this note to Earl Russell. On 28th November, 1861, Earl Russell replied:

Russell to Adams, 28 Nov., 1861, v. 1, p. 661.

"That if, in order to maintain inviolate the neutral character which Her Majesty has assumed, Her Majesty's Government should find it necessary to adopt further measures, within the limits of public law, Her Majesty will be advised to adopt such measures."

DIFFERENCE BETWEEN UNITED STATES AND ENGLISH NEUTRALITY LAW.

Just here it may be well to consider particularly those provisions of the United States neutrality law which do not exist in that of Great Britain; and I, fortunately, can give an opinion of that most observing English minister to the United States, Sir Frederick Bruce, and let this opinion be carefully read, for not one of the powers which he states to exist in the United States act are expressed in the English law.

He thus writes to Lord Stanley on 18th February, 1867:

Bruce to Stanley, 18 Feb., 1867, vol. 4, p 161.

"I have the honor to acknowledge the receipt of your Lordship's telegram of the 14th instant, inquiring what laws, regulations, or other means the United States Government possess *for the prevention of acts within their territories of which belligerents might complain as violating duties of neutrality.*

"The only law on the subject is the neutrality act of 1818. When a complaint is addressed to the Government of a vessel being fitted out in breach of the law, the matter is referred for investigation to the district court attorney (an officer of the Federal Government) in the State in which the vessel is situated. *It is his duty* to see that the law is respected, and *it is incumbent upon him to receive and collect evidence*, and to libel the ship if in his opinion *the circumstances of suspicion are sufficient* to warrant the institution of legal proceedings against her. He then reports the case to the Government, who decide on either proceeding with the libel or on releasing the vessel. In the latter event it is in the power of the Government to call upon the owners to give bonds in double the value of the vessel not to employ her for illegal purposes. This course is pursued where the evidence shows *grounds for suspicion, but when the grounds are not strong enough to warrant a prosecution with a view to forfeiture.* * * *

"Though there are no specific regulations in force as to the mode in which the law is to be carried out, I apprehend it may be inferred that this Government would consider *any circumstances of suspicion attending the fitting out or equipment of a ship as sufficient to warrant her detention until the case can be investigated* by the district attorney. *It is not necessary that the allegations should be of such gravity as, if proved,* would warrant her forfeiture. The owners may be compelled by law to give a bond previous to the sailing of an armed vessel to guard against the possibility of her being employed against a friendly power, should war exist between two countries at peace with the United States. And a similar bond can be exacted, under certain contingencies mentioned in the statute, from the owners of any vessel built for warlike purposes, and laden with war material.

"It is to be presumed that these provisions are intended to apply in cases of war ships fitted out during time of war, *where no direct evidence appears of illegal intent*, but where the Government thinks it advisable to call upon the owners to find security for keeping the peace. *In order to effect this object it is evident that a wide discretion must be left to the Government for the exercise of the power of detention.*

"I may remark that the Government of the United States has considerable advantages in proceeding against vessels under the statute. They have on the spot where the preparations are being made the district attorney, a legal officer responsible to the Government, to whom the power of investigation is committed. The libel is in the nature of a proceeding in admirality "*in rem.*" It is decided by a judge conversant with international and maritime law, and without the intervention of a jury."

I have also an English authority as to the English law and I extract from the opinion of Mr. Lush, one of the most eminent lawyers in the kingdom, given to Mr. Dudley who sought his advice to enable him to take measures to prevent the escape of the Alexandra.

Opinion of Mr. Lush, 16 Mch., 1863, vol. 2, p. 260.

"*There is no doubt about the character of this vessel, the purposes or parties for whom she is built,* or the main facts as above stated. The difficulty is to obtain legal evidence. To do this it will be necessary to examine the parties engaged in building and fitting her out. How can this be done?

"I am of opinion that there is *no process or proceeding by which the parties alleged to be engaged in building and fitting out the vessel in question can be compelled to give evidence.* I also think that the court of chancery *cannot interfere by injunction to restrain the parties from sending the vessel to sea* on the ground that by so doing they would be violating the provisions of the Foreign Enlistment Act.

"The charge being one of a criminal nature must be sustained by evidence making a *prima facie* case against the parties accused before any proceedings can be taken against them, or in order to justify the seizure of the vessel. It is impossible to say beforehand what amount and quality of testimony will be sufficient."

The English law is designed to punish but has no power to prevent. To give this power should have been the primary object of the law. A belligerent may not have a right to demand that the violations of the neutrality law should be punished, but he has a right to demand that the violations of it so far as it is in accordance with obligation of international law *be prevented.* And the obligation of a neutral are not limited by his domestic law.

A NEUTRAL'S DUTY NOT CONFINED TO THE EXECUTION OF HIS NEUTRALITY LAW.

And now I extract from a letter of Earl Russell to Mr. Adams:

Russell to Adams, 27 Mch., 1862, v. 2, p. 602.

"I agree with you in the statement that *the duty of nations in amity with each other* is not to suffer their good faith to be violated by evil-disposed persons within their borders *merely from the inefficacy of their prohibitory policy.*"

AMENDMENT TO ENGLISH NEUTRALITY LAW ASKED AFTER THAT IT HAD BEEN SHOWN TO BE INEFFICIENT.

We come now to consider why the English law was not amended. Bear in mind the admission by Earl Russell that the duty of a neutral nation is not to suffer its good faith to be violated merely from the inefficacy of the laws; the promise from him in November, 1861, that Her Majesty "will be advised to adopt such measures," as may be necessary, "to maintain inviolate the neutral character which she has assumed;" the fact established by the two authorities above quoted that the English law is deficient in wanting the very provision which gave the United States law its power and which alone gave power of prevention, and that this conclusion is apparent from all the facts that the Alabama, Florida, and other cruisers escaped either because the law officers did not use all the powers in the law which they afterwards used to stop the rams, or because the law did not offer an efficient "prohibitory policy."

Mr. Adams first suggestions that Great Britain should improve her neutrality law were made six months before the escape of the Florida and Alabama.

After those vessels had escaped, seeing how inefficient the law as administered had proved, on 20th November, 1862, he wrote to Earl Russell transmitting claims for damages by the Alabama, and said:

Adams to Russell, 20 Nov. 1862, v. 1, p. 666.

"Having done all in my power to apprise Her Majesty's Government of the illegal enterprise *in ample season for effecting its prevention*, and being now enabled to show the injurious consequences to innocent parties relying upon the security of their commerce from any danger through British sources ensuing from the omission of Her Majesty's Government, however little designed, *to apply the proper prevention in due season*, I have the honor to inform your lordship of the directions which I have received from my governmenf to solicit redress for the national and private injuries already thus sustained, *as well as a more effective prevention of any repetition of such lawless and injurious proceedings in Her Majesty's ports hereafter.*"

This letter was written with reference to the promise given by Earl Russell in his letter of 28th November, 1861, above quoted.

On 19th December, 1862, Earl Russell replied:

Russell to Adams, 19 Dec. 1862, v. 1, p. 667.

"As regards your demand for a more effective prevention for the future of the fitting out of such vessels in British ports, I have the honor to inform you that Her Majesty's Government, after consultation with the law officers of the crown, are of opinion *that certain amendments might be introduced into the foreign enlistment act*, which, if sanctioned by Parliament, would have the effect of giving *greater power to the Executive to prevent the construction in British ports of ships destined for the use of belligerents.*"

He further suggested that Mr. Adams should communicate with his own government and ascertain whether it was willing to make similar alterations in its own enlistment act, and said he should be ready at any time to confer with him, and to listen to any suggestions by which the two acts could be made more efficient.

Mr. Adams communicated with his own Government, and received the following instructions from Mr. Seward:

Seward to Adams, 19 Jan., 1863, vol 1, p 667.

"It is not presumed that our anti-enlistment statute is defective, or that Great Britain has ground to complain that it has not been effectually executed. Nevertheless, the proposition of Her Majesty's Government that the two Governments shall confer together upon amendments to corresponding acts in the two countries, evinces a conciliatory, a liberal and just spirit, if not a desire to prevent future causes of complaint. *You are, therefore, authorized to confer with Earl Russell, and to transmit, for the consideration of the President, such amendments as Earl Russell may, in such a conference, suggest, and you may think proper, to be approved.*"

On receipt of these instructions, Mr. Adams called on Earl Russell, and on the 13th February, 1863, gives this account of the interview which had taken place between them a few days before:

Adams to Seward, 13 Feb., 1863, vol 1, p 668.

"I observed that his Lordship's suggestion of possible amendments to the enlistment laws in order to make them more effective had been favorably received. Although the law of the United States was considered of *very sufficient vigor, the Government were not unwilling to consider propositions to improve upon it.*

"To that end I had been directed to ask whether any such had yet been matured by Her Majesty's ministers; if so, I should be happy to receive and transmit them to Washington. *His Lordship, repeating my remark that my Government considered its present enlistment law as sufficiently effective, then added that since his note was written the subject had been considered in the Cabinet, and the Lord Chancellor had expressed the same opinion of the British law.* Under these circumstances he did not see that he could have any change to propose.

"I replied that I should report this answer to my Government. *What explanation the Government was ready to give for its utter failure to execute a law confessed to be effective did not then appear.*"

On receipt of this dispatch from Mr. Adams, Mr. Seward wrote him, on March 2, as follows:

Seward to Adams, 2 Mar., 1863, vol 1, p 669.

"It remains for this Government, therefore, only to say that it will be your duty to urge upon Her Majesty's Government the desire and expectation of the President, that henceforward Her Majesty's Government *will take the necessary measures to enforce the execution of the law as faithfully as this Government has executed the corresponding statutes of the United States.*"

AMENDMENT AGAIN ASKED BY THE UNITED STATES.

About this time the opinion of the Chief Baron was given in the Alexandra case, and it seemed to be established that the English law was inefficient to punish as well as to prevent, therefore on 11th July, 1863, Mr. Seward wrote to Mr. Adams, as follows:

Seward to Adams, 11 July, 1863, vol 1, p 670.

> "The President thinks it not improper to suggest, for the consideration of her Majesty's Government, the question whether, on appeal to be made by them, Parliament might not think it just and expedient to amend the existing statute in such a way as to effect what the two Governments actually believe it ought now to accomplish. In case of such an appeal the President would not hesitate to apply to Congress for an equivalent amendment of the laws of the United States, if Her Majesty's Government should desire such a proceeding, although here such an amendment is not deemed necessary.
>
> "*If the law of Great Britain must be left without amendment, and be construed by the Government in conformity with the rulings of the Chief Baron of the Exchequer*, then there will be left to the United States no alternative but to protect themselves and their commerce against armed cruisers proceeding from British ports as against the naval forces of a public enemy, and *also to claim and insist upon indemnities for the injuries which all such expeditions have hitherto committed or shall hereafter commit against this Government and the citizens of the United States.*"

This letter was written at the time when Mr. Seward was so fearful lest Lairds' rams should escape.

On 16th Sentember, Mr. Adams wrote Earl Russell:

Adams to Russell, 16 Sept., 1863, vol 2, p 378

> "And here your Lordship will permit me to remind you that Her Majesty's Government cannot justly plead the inefficacy of the provisions of the enlistment law to enforce the duties of neutrality in the present emergency as depriving them of the power to prevent the anticipated danger."

He then goes on to state the suggestions that he had previously made that that law should be amended and the refusal on the part of the English Government.

This is the reply he received from Earl Russell:

Russell to Adams, 25 Sept., 1865, vol 2, p 384.

"There are passages in your letter of the 16th, as well as in some of your former ones, which so plainly and repeatedly imply an intimation of hostile proceeding toward Great Britain on the part of the Government of the United States, unless steps are taken by Her Majesty's Government which the law does not authorize, or unless the law, which you consider as insufficient, is altered, that I deem it incumbent upon me, in behalf of Her Majesty's Government, frankly to state to you that Her Majesty's Government will not be induced by any such consideration either to overstep the limits of the law, or to propose to parliament any new law which they may not, for reasons of their own, think proper to be adopted. They will not shrink from any consequences of such a decision."

AMENDMENT ASKED BY LIVERPOOL SHIP OWNERS.

The merchants of Liverpool, seeing the great destruction of American commerce that was taking place by the Alabama and Florida, which had escaped from British ports, because of an inefficient law or of an efficient execution of a law, were fearful lest in some future war their own vessels might suffer, and in June, 1863, certain ship-owners of Liverpool addressed a memorial to Earl Russell, beginning as follows:

Memorial, v. 1, p. 671.

"Your memorialists, who are deeply interested in British shipping, view with dismay the probable future consequences of a state of affairs which permits a foreign belligerent to construct in, and send to sea, from British ports vessels of war, in contravention of the provisions of the existing law.

"That the immediate effect of placing at the disposal of that foreign belligerent a very small number of steam cruisers has been to paralyse the merchant marine of a powerful maritime and naval nation, inflicting within a few months losses, direct and indirect, on its shipowning and mercantile interests which years of peace may prove inadequate to retrieve."

The memorial went on setting out very strongly the pecuniary damage which would ensue to England, should she hereafter be at war.

The reply shows what the ship owners asked, and what satisfaction they obtained:

Russell to Lamport *et al*, 6 July, 1863, v. 1, p. 673.

"Gentlemen,—I am directed by Earl Russell to acknowledge the receipt of the memorial, dated the 9th of June, signed by you and others of the merchants at Liverpool, in which you urge upon his lordship the expediency of proposing to parliament such amendments to the Foreign Enlistment Act as *shall enable the Government to prevent the construction in British ports of ships destined for the use of belligerents.*

"I am to state to you, in reply, that in Lord Russell's opinion, the Foreign Enlistment Act *is effectual for all reasonable purposes,* and to the full extent to which international law and comity can require, *provided proof can be obtained of any act done with the intent to violate it.*

"Even if the provisions of the act were extended, it would be still necessary that such proof should be obtained, because no law could or should be passed to punish upon suspicion instead of upon proof.

"I am, &c.,

"E. HAMMOND."

ESCAPE OF THE ALABAMA AN ADMITTED SCANDAL TO ENGLISH LAW.

Earl Russell admitted to Mr. Adams in March, 1863, that the escape of the Florida and Alabama was a scandal and reproach to English law. Explaining that admission he said, alluding to the Alabama in the House of Commons on 16 February, 1864:

"Having been thus equipped by an evasion of a law, I say it *is a scandal to our law that we should not be able to prevent such belligerent operations.* * * *

"If we have a law to prevent the fitting out of warlike vessels, without the licence of Her Majesty, I do say this case of the Alabama is a scandal and a reproach. A very learned judge has said that we might drive, not a coach and six, but a whole fleet of ships through that act of Parliament. If that be a correct description of our law, then I say we ought to have the law made more clear and intelligible; this law was said to be passed to secure the peace and welfare of this nation, and I trust it may be found in the end sufficient for that purpose. I say, however, that while the law remains in its present state, its purpose is obviously defeated, and its enactments made of no effect by British subjects who defy the proclamation of neutrality."

This is what in 1864 Earl Russell said of the escape of the Florida and Alabama and of the inefficiency of the law, and though in November, 1861, he had promised to amend the same should it be found necessary in order to maintain inviolate the neutral character which Her Majesty had assumed; and though subsequently in March, 1862, he had admitted that the responsibilities of neutral nations could not be avoided through "the inefficacy of their prohibitory policy" yet no amendment was even suggested by the Government.

It remains to show that the United States have made this neglect to amend the law a part of their ground of complaint.

REFUSAL TO MAKE THE LAW EFFICIENT CLAIMED BY THE UNITED STATES AS ONE GROUND OF ENGLAND'S LIABILITY.

Mr. Adams wrote to Earl Russell on 20th May, 1865, see *ante*, p. 5, giving the ground of the United States claim and said, among other things, that the efforts which Her Majesty's Government made to suppress the abuse of her neutrality "proved in a great degree powerless from the inefficacy of the law on which they relied and *from their absolute refusal, when solicited, to procure additional powers to attain the objects*." Then showing that the chief preventative power of the United States law was in the 10th and 11th sections which in 1819 had been added at the request of the Portuguese Minister to make the law more effective, that no similar power of prevention existed in the English law, and that the several vessels would not have escaped had such provisions existed, he showed that the responsibility for the evil consequences resulting from that escape were entailed with renewed force upon Great Britain on account of her refusal to amend her law.

On 30th August, 1865, after the war was over, Earl Russell wrote as follows in reply:

Russell to Adams, 30 Aug., 1865, vol 1, p 677.

"You say, indeed, that the Government of the United States altered the law at the urgent request of the Portuguese Minister. But you forget that the law thus altered was the law of 1794, and that the law of 1818, then adopted, was, in fact, so far as it was considered applicable to the circumstances and institutions of this country, the model of our Foreign Enlistment Act of 1819.

"Surely, then, it is not enough to say that your Government, at the request of Portugal, induced Congress to provide a new and more stringent law for the purpose of preventing depredations, if

Great Britian has already such a law. Had the law of the United States of 1818 not been already in its main provisions, adopted by our legislature, you might reasonably have asked us to make a new law but, surely, we are not bound to go on making new laws *ad infinitum*, because new occasions arise.

"The existing law, has in fact, not proved inadequate, when circumstances of strong suspicion have been so far established as to justify the Government in ordering the detention of the suspected vessels; and it is by no means certain that any possible alteration of the law would enable more to be done, in the way of prevention, than this. That power was exercised in the case of the rams, in the Mersey, and of the Canton or Pampero, in the Clyde; and in neither case has the power so exercised been censured or revoked either in a court of law or by any vote of Parliament."

On 18th September, Mr. Adams replied, and said:

Adams to Russell, 18 Sept., 1865, vol 1, p 679.

"The British law is, as your Lordship states, a re-enactment of that of the United States, but it does not adopt all of 'its main provisions,' as you seem to suppose. Singularly enough, it entirely omits those very same sections which were originally enacted in 1817, as a temporary law on the complaint of the Portuguese minister, and were made permanent in that of 1818. It is in these very sections that our experience has shown us to reside the best preventative force in the whole law. I do not doubt, as I had the honor to remark in my former note, that if they had been also incorporated in the British statute, a large portion of the undertakings of which my government so justly complains would have never been commenced; or, if commenced, would never have been executed. Surely it was not from any fault of the United States that these effective provisions of their law failed to find a place in the corresponding legislation of Great Britain. But the occasion having arisen when the absence of some similar security was felt by my government to be productive of the most injurious effects, I cannot but think that it was not so unreasonable, as your Lordship appears to assume, that I should hope to see a willingness in that of Great Britain to make the reciprocal legislation still more complete. In that hope it was destined to be utterly disappointed. Her Majesty's Government decided not to act. Of that decision it is no part of my duty to complain. The responsibilities for the injuries done to citizens of the United States, by the subjects of a friendly nation, by reason of this refusal to respond, surely cannot be made to rest with them. *It appears, therefore, necessarily to attach to the party making the refusal.*"

This responsibility seems to attach all the more strongly when we find that since 1865 the British Government have taken measures to amend their law to conform to that of the United States.

THE PROPOSALS MADE BY GREAT BRITAIN SINCE THE REBELLION ENDED TO CHANGE HER LAW, SHOW THAT IT SHOULD HAVE BEEN AMENDED IN 1861.

It is somewhat surprising to find that the same government which for the four years during which continued attempts had been made in violation of its neutrality had proposed no amendment to its laws though they had been proven to be inefficient to prevent such attempts, should afterwards earnestly desire to co-operate with the United States in the revision of these laws, "as a means of promoting peace and abating the horrors of war; and a work, therefore, which would be worthy of the civilization of our age, and which would entitle the governments which achieved it to the gratitude of mankind," to quote the words of the Earl of Clarendon, but such is the fact.

Earl Clarendon wrote Sir Frederick Bruce on the 26th December, 1865, of an interview he had had with Mr. Adams, as follows:

Clarendon to Bruce, 26 Dec., 1865, v. 1, p. 680.

> "I, however, asked Mr. Adams whether it would not be both useful and practical to let bygones be bygones, to forget the past, and turn the lessons of experience to account for the future. England and the United States, I said, had each become aware of the defects that existed in international law, and I thought it would greatly redound to the honor of the two principal maritime nations of the world to attempt the improvements in that code which *had been proved to be necessary.*"
>
> "*Mr. Adams, in reply, said the law of England, in its international application, stood greatly in need of amendment;* but he gave me no encouragement to expect that his Government would co-operate with that of Her Majesty in the course of proceeding which I had suggested.
>
> "You will, however, avail yourself of such opportunities as you may think fitting to bring the subject under the consideration of Mr. Seward or the President; and you can neither exaggerate the importance attached to it by her Majesty's Government or the satisfaction it would give them to co-operate with the Govenment of the United States in a work of which the benefit would be universal."

The English Government here in effect said what the Liverpool shipowners in 1863, expressed in their memorial to Earl Russell, that it was fearful lest the inability of Her Majesty's

Government "to detect and punish breaches of the law notoriously committed by certain of her Majesty's subjects may hereafter be successfully imitated by the Government of other countries in answer to English remonstrances."

From the next extract it will be seen that Earl Russell had himself sought such amendment after the Shenandoah had returned to Liverpool, and that the United Staters refused to co-operate, claiming that their own laws were efficient.

On 3d January, 1866, this letter was written by Mr. Adams to Earl Clarendon:

Adams to Clarendon, 3 January, 1866, v. 1, p. 681.

"It may, perhaps, be recollected by your lordship that in the note which I had the honor to address to you on the 18th November, allusion was made to a suggestion made by your predecessor, the Right Honorable Earl Russell, in his note of the 2d of the same month, which I was then answering, that looked to the possibility of a concurrent revision of the statutes of both nations to the end that greater security might be given to them against those who endeavor to evade the letter of their present neutrality laws. Considering this in the nature of a proposition, I took the liberty to mention to you that I should with pleasure transmit it for the consideration of my Government."

"I have now the honor to inform your lordship that the views of that subject expressed in my note have met with approval. It is, then, with regret, but without surprise, that I find myself directed to add that the United States do not incline towards an acceptance of his lordship's proposition."

THE AMENDMENTS TO THE NEUTRALITY LAWS PROPOSED BY HER MAJESTY'S COMMISSIONERS ESTABLISH GREAT BRITAIN'S LIABILITY FOR THE ALABAMA CLAIMS.

In 1867, Her Majesty's Government had become thoroughly sensible that the English neutrality laws had been proven to be inefficient, and resolved to consider what changes ought to be made in them to make them more efficient and to bring them into full conformity with its international obligations, and the following commission was given:

"Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the faith.

"To our right trusty and well-beloved Councillor Robert Monsey Baron Cranworth; our right trusty and well-beloved Richard Monckton Baron Houghton; our right trusty and well-beloved Councillor Sir Hugh McCalmont Cairns, knight, a judge of the court of appeal in chancery; our right trusty and well-beloved Councillor Stephen Lushington, doctor of civil law, judge of the high court of admiralty; our right trusty and well-beloved Councillor Sir William Erle, knight; our trusty and well-beloved Sir George William Wilshere Bramwell, knight, one of the barons of the court of exchequer; our trusty and well-beloved Sir Robert Joseph Phillimore, knight, doctor of civil law; our advocate general; our trusty and well-beloved Sir Roundell Palmer, knight; our trusty and well-beloved Travers Twiss, doctor of civil law; our trusty and well-beloved William George Granville Venables Vernon Harcourt, esquire, one of our counsel learned in the law; our trusty and well-beloved Thomas Baring, esquire; our trusty and well-beloved William Henry Gregory, esquire, and our trusty and well-beloved William Edward Forster, esquire, greeting:

"Whereas, we have deemed it expedient that a commission should forthwith issue to inquire into and consider the character, working, and effect of the laws of this realm, available for the enforcement of neutrality during the existence of hostilities between other states with whom we are at peace; and to inquire and report *whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with our international obligations:*

"Now know ye, that we, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint you] * * * [to be our commissioners for the purposes aforesaid.

"And for the better effecting the purposes of this our commission, we do by these presents give and grant to you, or any five or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this our commission, and also to call for, have access to, and examine all such books, documents, registers and records as may afford the fullest information on the subject and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

"And we do by these presents will and ordain that this our commission shall continue in full force and virtue, and that you our said commissioners, or any five or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

"And we do further ordain that you, or any five or more of you, may have liberty to report your proceedings under this commission from time to time if you should judge it expedient so to do.

"And our further will and pleasure is that you do, with as little delay as possible, report to us under your hands and seals, or under the hands and seals of any five or more of you, your opinion upon the several points herein submitted for your consideration.

"And for your assistance in the due execution of this our commission, we have made choice of our trusty and well-beloved Francis Phipps Onslow, esquire, barrister-at-law, to be secretary to this our commission, and to attend you, whose services and assistance we require you to use from time to time, as occasion may require.

"Given at our court at St. James's the 30th day of January, 1867, in the 30th year of our reign.

"By Her Majesty's command. S. H. WALPOLE."

Notice the men who constituted the trusty and well beloved counsellors to whom was given the important duty embraced under the above commission, Baron Cranworth, Lord Chancellor; Baron Houghton, perhaps better known as Richard Monckton Wells; Sir Hugh, now Baron Cairns, who had successfully opposed the Government law officers in the case of the Alexandra, and who in Parliament had declared that the seizure of the rams was illegal and unjustifiable; Doctor Lushington judge of the High Court of Admiralty; Sir Willliam Erle, who for a long time had been Chief Justice of the Court of Common Pleas; Baron Bramwell, one of the judges of the Court of Exchequer and the one who had agreed with Chief Baron Pollock in the opinion which had released the Alexandra and justified the building of the Florida and Alabama: Sir Robert Joseph Phillimore a well known writer on international law: Sir Roundell Palmer who as Solicitor General and Attorney General had become thoroughly acquainted with the attempts of the Government to execute the existing law and the difficulties that had been experienced in so doing: Mr. Twiss, whose work on international law is of the highest authority: Mr Harcourt who under the name of Historicus had written very able papers upon the various questions involved in the so-called "Alabama Claims:" Messrs. Baring and Forster, members of Parliament, who had maintained in the House of Commons that the Florida, Alabama and other vessels had escaped in violation of the duty of Great Britain to maintain a strict and impartial neutrality, and Mr. Gregory who in the House of Commons on the 4th March, 1861, gave notice of a motion "to call the attention of Her Majesty's Government to the expediency of prompt recognition of the Southern Confederacy of America."

Most of these men had thoroughly examined each side of the questions that, from 1861 to 1865, had arisen in the enforcement of England's neutrality law, and had each expressed decided and opposite opinions in regard to the same, and together they embodied all the elements necessary to arrive at a most fair and just decision.

I therefore quote their report at length:

"*To the Queen's most excellent Majesty:*

"We, your Majesty's commissioners, appointed 'to inquire, &c.' have now to state to your Majesty that we have held twenty-four meetings, and, having inquired into and considered the subject so referred to us, have agreed to the following report:

"The statute now available for the enforcement of neutrality during the existence of hostilities between states with whom your Majesty is at peace is the 59 Geo. III, c. 69, commonly called the 'foreign enlistment act.'" * * * *

"This, then, being the statute directly available in this country for the enforcement of neutrality, our duty has been to inquire and report whether it is susceptible of any and what amendments, and *we are of opinion that it might be made more efficient by the enactment of provisions founded upon the following resolutions:*

"I. That it is expedient to amend the foreign enlistment act by adding to its provisions a prohibition against the preparing or fitting out in any part of her Majesty's dominions of any naval or military expedition to proceed from thence against the territory or dominions of any foreign state with whom her Majesty shall not then be at war;

"II. That the first paragraph of section 7 of the foreign enlistment act should be amended to the following effect:

"If any person shall within the limits of her Majesty's dominions—

"(*a.*) Fit out, arm, dispatch, or cause to be dispatched, any ship with intent or knowledge that the same shall or will be employed in the military or naval service of any foreign power in any war then being waged by such power against the subjects or property of any foreign belligerent power with whom her Majesty shall not then be at war.

"(*b.*) Or shall within her Majesty's dominions build or equip any ship with the intent that the same shall, after being fitted out and armed either within or beyond her Majesty's dominions, be employed as aforesaid;

"(*c.*) Or shall commence or attempt to do, or shall aid in doing, any of the acts aforesaid, every person so offending shall be deemed guilty of a misdemeanor.

"III. That in order to enable the executive government *more effectually to restrain and prevent attempted offences* against section 7 of the foreign enlistment act, additional provisions to the following effect should be inserted in the statute:

"(*a.*) That if a secretary of state shall be satisfied that there is a reasonable and probable cause for believing that a ship which is within the limits of her Majesty's dominions has been or is being built, equipped, fitted out, or armed, contrary to the enactment, and is about to be taken beyond the limits, or that the ship is about to be dispatched contrary to the enactment, such secretary of state shall have power to issue a warrant stating that there is such a reasonable and probable cause for believing as above aforesaid, and upon such a warrant the commissioners of customs or any other person or persons named in the warrant shall have power to arrest and search such ship, and to detain the same until it shall be either condemned or released by process of law, or in manner hereinafter mentioned.

"(*b.*) That the power hereinbefore given to a secretary of state may, in parts of her Majesty's dominions beyond the seas, be exercised by the governor or other person having chief authority.

"(*c.*) That power be given to the owner of the ship or his agent to apply to the court of admiralty of the place where the ship is detained, or, if there be no such court there, to the nearest court of admiralty, for its release.

"(*d.*) That the court shall put the matter of such detention in course of trial between the applicant and the Crown, with usual admiralty appeal to the privy council.

"(*e.*) That if the owner shall establish to the satisfaction of the court that the ship was not and is not being built, equipped, fitted out, or armed, or intended to be dispatched, contrary to the enactment, the ship shall be released and restored.

"(*f.*) That if the owner shall fail to establish to the satisfaction of the court that the ship was not and is not being built, equipped, fitted out, or armed, or intended to be dispatched, contrary to the enactment, then the ship shall be detained till released by order of the secretary of state; nevertheless the court may, if it shall think fit, order its release, provided the owner shall give security to the satisfaction of the court that the ship shall not be employed contrary to the enactment, and provided that no proceedings are pending for its condemnation.

"(*g.*) That if the court shall be of opinion that there was not reasonable and probable cause for the detention, and if no such cause shall appear in the course of the proceedings, the court shall have power to declare that the owner ought to be indemnified by the payment of costs and damages, which, in that case shall be payable out of any moneys legally applicable by the commissioners of the treasury for that purpose.

"(*h.*) That any warrant of the secretary of state shall be laid before Parliament.

"(*i.*) That the proceedings herein provided shall not affect the power of the Crown to proceed, if it thinks fit, to the condemnation of the ship.

"(*k.*) That the following exceptions be made from this resolution:

"1. Any foreign commissioned ship.

"2. Any foreign non-commissioned ship dispatched from this country after having come within it under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character shall have taken place in this country.

"IV. That it is expedient to make the act of hiring, engaging, or procuring any person within her Majesty's dominions to go on board any ship, or to embark from any part of her Majesty's dominions, by means of false representations as to the service in which such persons are intended to be employed, with intent on the part of the person so hiring, engaging, or procuring as aforesaid, that the persons so hired, engaged, or procured as aforesaid shall be employed in any land or sea service prohibited by section 2 of the foreign enlistment act, a misdemeanor, punishable like other misdemeanors under the same section.

"V. That the forms of pleading in informations and indictments under the foreign enlistment act should be simplified.

"VI. That if, during the continuance of any war in which her Majesty shall be neutral, any prize not being entitled to recognition as a commissioned ship of war shall be brought within the jurisdiction of the Crown by any person acting on behalf of, or under the authority of any belligerent Government, which prize shall have been captured by any vessel fitted out during the same war for the service of such Government whether as a public or a private vessel of war, in violation of the laws for the protection of the neutrality of this realm, or if any such prize shall be brought within the jurisdiction as aforesaid by any subject of the Crown, or of such belligerent Government, having come into possession of such prize with notice of the unlawful fitting out of the capturing vessel, such prize should, upon due proof in the admiralty courts, at the suit of the original owner of such prize or his agent, or of any person authorized in that behalf by the Government of the state to which such owner belongs, be restored.

"VII. *That in time of war no vessel employed in the military or naval service of any belligerent which shall have been built, equipped, fitted out, armed, or dispatched contrary to the enactment, should be admitted into any port of her Majesty's dominions.*

"In making the foregoing recommendations we have not felt ourselves bound to consider whether we were exceeding what could actually be required by international law, but *we are of opinion that if those recommendations should be adopted, the municipal law* *of this realm available for the enforcement of neutrality will derive increased efficiency, and will, so far as we can see, have been brought into full conformity with your Majesty's international obligations.*

"We have thought it better to present our recommendations in the form of general resolutions, laying down the principles on which legislation should be framed, rather than to attempt to draw up in detail the precise form of the statute.

We have subjoined, in an appendix to this report, certain papers relating to the laws of foreign countries on this subject, which have been communicated to us by your Majesty's secretary of state for foreign affairs, together with a short historical memorandum, prepared by Mr. Abbot* for our information, and some other documents illustrative of the subject.

"All which we submit to your Majesty's gracious consideration.

CRANWORTH. [L. S.]
HOUGHTON. [L. S.]
CAIRNS. [L. S.]
W. ERLE. [L. S.]
G. W. W. BRAMWELL. [L. S.]
R. J. PHILLIMORE. [L. S.]
ROUNDELL PALMER. [L. S.]
T. TWISS. [L. S.]
W. VERNON HARCOURT. [L. S.]
T. BARING. [L. S.]
W. H. GREGORY. [L. S.]
W. E. FORSTER. [L. S.]

"Dr. Lushington did not sign the report, as he was, from indisposition, unable to attend the meetings after June, 1867."

"REASONS GIVEN BY MR. VERNON HARCOURT FOR DISSENTING FROM CERTAIN PORTIONS OF THE REPORT.

"Though the undersigned has signed the report, he wishes it to be understood that he has only signed it subject to the following observations:

"In the main part of the recommendations of the report I entirely concur, more especially in those which have for their object to increase the efficiency of the power of the executive government to restrain attempted violations of the neutrality of the country.

"The portions of the report with respect to the policy of which I entertain considerable doubt are those parts of resolution II, § *b*, and resolution III, § *a*, the first of which extends the punitive power of the law, and the second the preventive authority of the executive, to the *building* of ships, apart from the question of their arming or dispatch from the realm.

"My apprehension is lest such an extension of the law should unnecessarily—and if unnecessarily, then unwisely—interfere with the ship-building trade of the country. * * *

"Either the creation of this new offense will or will not tend to embarrass and injure the ship-building trade of the country. If it will not, as some believe, it would be satisfactory that this should be clearly established. I confess, if I were satisfied of this, my objections to the course proposed would be in a great measure removed. But if, as I believe, the necessity of a perpetual official supervision and interference would greatly hamper, and probably ultimately destroy this branch of our commerce, that again is a point on which I think the nation has a right to expect that we should afford them the means of forming a sound judgment. It may be that for adequate objects we should be willing to sacrifice such a trade. * * *

This report establishes England's liability for the Alabama claims.

The Commissioners in effect said that the building, equipping, fitting out, arming, and dispatching of the Florida, Alabama, Georgia and Shenandoah, were violations of a strict and impartial neutrality, and should have been prevented by Great Britain in accordance with her duty as a neutral; that Her Majesty's Government should have seized these vessels when there was reasonable and probable cause for believing that the representations of Mr. Adams were true; that it should have assisted him to obtain evidence, and should have examined the parties who could alone know the facts; that it should have detained the vessels until the owner or builder could have established to the satisfaction of the court that they were intended for a lawful voyage; and that after a reasonable and probable cause for suspicion was shown, it should have put the burden of proof upon its citizens who could easily have established their own innocence if they were innocent, rather than upon the Diplomatic Representative of the United States, who could only establish the crime by the evidence of spies and informers.

The report further shows that the neutrality law of Great Britain was defective in 1860, and wanted the power to prevent the very violations of law it was intended to punish, and that in 1861, it should have been amended at the request of the Government of the United States, which in 1819, at the time the English law was passed, had a statute which provided the very means of prevention which the English law lacked and which Her Majesty's Commissioners recommended.

It is not necessary to comment *further* on this report except to again call attention to the learning, experience and previously expressed opinion of the men who signed it, and then to consider that these men made the above recommendations and said: "We are of opinion that if those recommendations should be adopted, the municipal law of this realm available for the enforcement of neutrality will derive increased efficiency, and will, so far as we can see, have been brought into full conformity with your Majesty's international obligations."

If those recommendations would have given the laws for the enforcement of neutrality increased efficiency in 1867, they would have done the same in 1861, and should then have formed part of England's law in order to have brought the same "into full conformity with Her Majesty's international obligations."

If the recommendations of this report had been embodied in the neutrality law of England, in 1860, the insurgents would not have contracted for the building of the Florida and other vessels.

If they had been added to that law in November, 1861, after Mr. Adams had called the attention of Earl Russell to the matter, the Florida and other vessels would never have escaped, and if they had escaped they would never have been allowed to enter any of Her Majesty's ports and from them begin anew their careers of piracy.

We have already seen that the duty of Great Britain to have prevented the escape of the Alabama and other cruisers has been admitted; that she could have done so had she used the same means of prevention which the Attorney General justified as demanded by the international obligations of the Government in the case of Laird's rams, and now we see that she could have prevented their escape had her laws been in full conformity with Her Majesty's obligations, as stated even by the men who condemned the seizure of the Alexandra and of Lairds rams, and advocated the immediate recognition of the independence of the insurgents, and thus we again establish the liability of Great Britain for damages caused from the several cruisers by the substantial admissions of her own Commissioners that she did not use all the means within her power and in conformity with her international obligations to prevent their escape.

We come now to consider what Great Britain might have done to prevent the destruction by the Florida, Alabama, Georgia and Shenandoah, after they had escaped from her ports in violation of her duty, and either through the imperfection of her laws, or through the neglect of her officers.

And first let us recall what was done.

NO ACTUAL ATTEMPT MADE TO PREVENT DAMAGE.

From the facts already stated we have seen that absolutely nothing was done after the escape of the Florida and other vessels to prevent them from destroying the commerce of the United States.

On the return of *the Florida* to Nassau, on 20th January, 1863, (see *ante*, p. 64) Captain Maffit was received very cordially and dined with the Governor. The vessel was repaired, provisioned, and equipped, her crew was increased and a full supply of coal was taken on board.

At Barbadoes about a month later, (*ante, p.* 65,) she received another full supply of coal against the protest of the United States Consul, Mr. Trowbridge, and in violation of the instructions which had been given by Her Majesty to be applied to each of the belligerents alike.

When *the Alabama* left Liverpool, the law officers had decided to seize her, not on suspicion only, but on what they considered a violation of law proven by legal evidence. After her escape was known, orders were sent to Nassau to seize her if she went there. She did not go there, and when she next did visit one of her Majesty's ports, it was at Port Royal, Jamaica, on 20th January, 1863.

This was nearly six months after the Alabama had left Liverpool, and after the order had been sent to Nassau to seize her. Her burnings and destructions were known in Great Britain and abundant time had elapsed for the Government to have sent orders to the Governors of the several colonies to seize her or refuse her entrance.

Note, then, how she was received.

The affidavit of Paymaster Yonge, (*ante* p. 98,) informs us in part.

This is what Semmes says in his Journal:

" *Wednesday, January* 21.—Found here," Port Royal, Jamaica, "several English men of war, the Jason, the Challenger, the Greyhound, &c., the commanders of all of which called on us. I saw the Commodore (Dunlop) this morning, and requested of the Governor, through him, permission to land my prisoners, &c., which was readily granted. Made arrangements for coaling and provisioning the ship, and for repairing damages."

Here is what another officer says:

Vol. 4, p. 192.

"21st" January "our commander waited upon the Governor for permission to land prisoners and effect *the necessary repairs after our conflict.* Permission was readily granted. As soon as our arrival became know the most intense excitement prevailed. It is impossible to describe the hospitable welcome we received, every one placing their houses at our disposal. Up to 9 p. m. visitors were constantly received, all expressing a most hearty, encouraging sympathy for our cause, and speaking hopefully of our prospects. Still the same enthusiasm prevails, visitors of each sex and every class coming on board, officers and men going on shore and receiving the most flattering attention. Hauled the brig Reindeer, of London, alongside, and commenced coaling, repairing damages, calking, &c. 11 a. m., paroled prisioners, and landed them ashore."

The Alabama on the 11th January had sunk the United States gunboat Hatteras off Galveston, and the damages she had received in that conflict were those repaired at Port Royal.

We have seen (*ante*, p. 99,) how the Alabama was welcomed at Cape of Good Hope.

The Georgia was received most hospitably at Simon's Bay, Cape of Good Hope, remained there for a fortnight—repaired and coaled. She went home to Liverpool; was there allowed to disarm, and was sold to a British subject, and in his name renewed her register as a British vessel.

The Shenandoah was received and made welcome at Melbourne; remained there more than three weeks, was repaired at the Government slip in accordance with the advice of the Government engineer and the Colonial Governor hurried up the work. On her arrival at Melbourne the Shenandoah had on board four hundred tons of coal, but took in three hundred more from the ship John Frazer, which had been sent there from Liverpool with coal expressly for her. At Melbourne, Captain Waddell added forty more British snbjects to his fighting force, and in the end carried them home to Liverpool, where officers and crew were all welcome.

If the ports of Richmond, Charleston, Mobile, and New Orleans, had been open to the Confederates, they could not possibly have afforded such opportunities for supply of coal and for repairs, as were afforded by Great Britain in her ports to the Alabama and other vessels.

Great Britain for her own protection in time of war had secured these various stations in all parts of the world as stations for coal and for her navy. Now she opened them all to the Alabama and other vessels whose escape and equipment had been in violation of her laws and her duty. I might go on to show that these vessels received privileges in these ports which were refused to United States vessels of war, but for my purpose I have done enough in showing that every one of these cruisers was even joyfully welcomed in all the ports of Great Britain, and allowed to coal and repair wherever and whenever desired.

THE REASON GIVEN TO JUSTIFY THIS FRIENDLY RECEPTION IN ENGLISH PORTS OF THE FLORIDA, AND OTHER SCANDALS TO ENGLISH LAW.

And what is the reason given in justification of this conduct?

It is in substance this: The Queen by her proclamation had recognised the insurgents as belligerents, and was thereafter in duty bound to allow to one belligerent the same rights and privileges that she allowed to the other, and though the Florida, Alabama, Georgia and Shenandoah, were equipped in violation of her laws, yet they did not come into her ports after their escape until they had become duly commissioned as vessels of war, when she had no power to seize them and could not exclude them from her ports without a violation of her duty to grant the same privileges to the war vessels of each belligerent.

WHAT MEANS OF PREVENTION AFTER THE ESCAPE OF THESE VESSELS WERE WITHIN THE POWER OF GREAT BRITAIN.

England could have used means within her power after the escape of these vessels *to prevent the damage caused by them.*

We have already seen that it has been admitted by England that these vessels had escaped in violation of her duty and her laws, and that they should have been seized before they left an English port.

When they next entered an English port the armed hostile expedition from a British port had been perfected, the British flag had been hauled down, a Confederate flag run up and a blank Confederate commission filled out at Liverpool with the name of Maffit, Semmes, Maury or Waddell, had been read.

Under these circumstances Great Britain had several means within her power to prevent these vessels from doing further damage to the commerce of the United States.

First. She could have withdrawn the protection given to them by the Queen's proclamation.

Second. She could have seized them in any English port.

Third. She could have forbidden their entrance into any English port.

THE WITHDRAWAL OF THE PROCLAMATION WOULD HAVE PREVENTED FURTHER DAMAGE.

The proclamation that gave a Confederate flag and commission any rights whatever was unprecedented and precipitate.

It had been given when even the representatives who asked for it admitted that their Government was "entirely without a navy" and with "no commercial marine out of which to improvise public armed vessels," and practically the only ships that the insurgents ever had upon the ocean were built under the protection of that proclamation, and destroyed United States commerce under the same protection.

That proclamation particularly enjoined the citizens of Great Britain to refrain from engaging in any such expedition as the Florida proved to be. These were the words of the proclamation after reciting the Foreign Enlistment Act:

> "And we do hereby warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation and of our high displeasure to do any acts in derogation of their duty, as subjects of a neutral sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as, for example, and more especially • • •
>
> "By fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer, or transport by either of the said contending parties; will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.
>
> "And we do hereby declare, that all our subjects and persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and they will in no wise obtain any protection from us against any liabilities or penal consequences, but wil', on the contrary, incur our high displeasure by such misconduct."

When therefore, English citizens, Her Majesty's subjects, had sent out the Florida and other vessels in violation of the duties of a strict and impartial neutrality, and when the escape of those vessels was an admitted scandal and reproach to the very law which the Queen's proclamation had enjoined her subjects to obey, it certainly does seem inconsistent that this very proclamation should be invoked to protect the crimes which it had been issued to prevent.

By a simple withdrawal of this proclamation, or by a simple declaration that the vessels that had been built, equipped and armed, in violation of it were not entitled to protection under it Great Britain could have prevented the destruction of the commerce of the United States.

A mere revocation of that proclamation would have left the Alabama with no more right to reception and hospitality in an English port than a pirate.

Semmes could have then said as the master's mate of the Shenandoah afterwards said:

> "As a cruiser we had no longer a right to sail the seas, for in that character we were liable to capture by the ship of any civilized nation, for we had no longer a flag to give a semblance of legality to our proceedings."

The Florida and all the other cruisers had received their Commissions on the high seas. They were really not entitled to recognition as belligerent war vessels by any government, much less by the Government of Great Britain whose laws and neutrality they had violated.

Notice what Mr. Vernon Harcourt desired to have added to the report of Her Majesty's Commissioners for the revision of her neutrality laws.

> "There is one other matter which I should gladly have seen embodied in the recommendations of the report. A strong feeling has recently grown up against the recognition of belligerent commissions granted to vessels on the high seas, by which such vessels become at once raised to the position of lawful belligerent cruisers, though they start from no belligerent port, and, in fact, derive no support from the natural and legitimate naval resources of those on whose behalf they wage war. It seems to me that for all reasons it is wise to discourage such a practice. As there is no rule of international law which forbids such delivering of commissions on the high seas, we cannot of course refuse to recognize the title of such a cruiser to all the legitimate rights of war in places beyond our jurisdiction. But we are masters of our own actions and our own hospitality within the realm. Though, therefore, we cannot dispute the validity of such a commission on the high seas, or the legality of captures made by such a vessel, we may refuse to admit into our ports any vessel which has not received its commission in a port of its own country. By so doing we should be acting strictly within the principles of the law of nations, and our example would very probably be followed by other maritime states, and thus in the end tend to repress the practice altogether. For this purpose I should have been very glad if the commission had thought fit to recommend that in time of war no armed vessel engaged in hostilities should be admitted into any of our ports which should not hold a commission delivered to it in some port of military or naval equipment actually in the occupation of the Government by which she is commissioned."

On this authority not only should Great Britain have denied belligerent rights to those vessels because they had been built and armed in violation of the proclamation which gave them those rights, but because they were not entitled to that recognition even if they had not been built and armed from an English port.

The United States referring to the circumstances under which the Queen's proclamation had been issued, to the actual condition of the ports of the insurgents, and to the fact that the only war vessels that showed the Confederate flag on the ocean had been built in English ports, asked that the proclamation should be withdrawn.

The withdrawal of belligerent rights from the Florida and the other cruisers was just and possible and beyond doubt would have prevented to a great extent the damage done to the commerce of the United States, but no withdrawal was made. Great Britain failed to use another means within her power to prevent the destruction by the Florida and other cruisers, and the Shenandoah refitted at Melbourne in February, 1865, in the Government slip, and remained entitled to all the rights given by the Queen's proclamation till September of the same year.

GREAT BRITAIN MIGHT HAVE SEIZED THE FLORIDA, ALABAMA AND OTHER CRUISERS ON THEIR FIRST ENTRANCE INTO A BRITISH PORT.

If Great Britain had withdrawn from the Florida and other cruisers all protection given them by the Queen's proclamation she could without doubt have seized them whenever they came into her ports.

But even without a definite withdrawal of the proclamation the Confederate flag and commission gave no absolute protection within neutral jurisdiction.

Great Britain could have seized these British cruisers on their first entrance into British waters.

It may be true that a public armed ship of a belligerent built in a belligerent port and commissioned therefrom is exempt from the jurisdiction of any neutral sovereign within whose territory she claims the rights of hospitality. But the Alabama had no such right to protection in the ports of Great Britain. The English Government had decided that her building was in violation of English laws. Her commission had been really sent out with her from Liverpool. No change had taken place in her ownership from the time of her leaving Liverpool till she was received so hospitably at Jamaica except that the British flag had been hauled down and the Confederate flag raised, and Captain Semmes had declared her to be a Confederate ship of war.

The fact that the Alabama was claimed as Confederate property can make no difference. She was liable to confiscation before sale, and the real or pretended sale was void. Chief Justice Taney decided that a contract to furnish arms to General Chambers, of the Texan army, was void. He says: "A citizen of the United States can do no act, nor enter into any agreement, to promote or encourage revolt or hostilities against the territories of a country with which our Government is pledged to be at peace." If he does so he cannot claim "the aid of a court of justice to enforce it." The judge does not decide what would have been the law if the United States had recognized Texas as an independent State, but says: "It belongs exclusively to Government to recognize new states in the revolutions which may occur in the world; and until such recognition courts of justice are bound to consider the ancient state of things as remaining unaltered." (14 Howard, 46.)

Supposing, now, the Alabama had been seized in a British port, the defence would have been, "She is the property of the Confederate Government, and England has no jurisdiction over her." The English might reply, "She was your property as long as she remained in your territory, or upon the ocean. We could not have enforced the contract against you; it would have been void as to our citizens; they had no rights under it. And now, when you have brought this vessel within our waters we shall consider the sale void as to you. It is the same to our courts as if no contract had been made. You bought a vessel liable to seizure and confiscation; the sale was illegal, and cannot be used as a defence in our courts. She is still English property, and as such is within our jurisdiction."

If the Alabama had been seized before her escape it would have been no defence that she was then the property of the Confederate Government, and not of Mr. Laird.

But we have seen that the Georgia and Shenandoah remained registered as a British vessel, long after they had began their burnings, they certainly could have been seized.

The United States act of 1818 provides "that in every case in which the process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, it shall be lawful for the President of the United States, or such other person as he shall have empowered for the purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, in order to the execution of the prohibition and penalties of this act, and for the preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States."

If, then, a vessel like the Alabama should be built in our ports, or if a duly commissioned war vessel should increase her armament in our ports, this law would give the Executive power to seize and detain her, even if she were "a war vessel of a foreign prince."

One state has no jurisdiction over the public vessel of another state for the violation of any municipal law, but on the authority of Wheaton it does have jurisdiction for a violation of international law.—(Lawrence's Wheaton's International Law, 205–208, 735.)

To show that Great Britain might have seized and justified the seizure of the Florida and other vessels, note what course Her Majesty's law officers justified in the case of the Tuscaloosa.

A CONFEDERATE FLAG AND COMMISSION HELD TO BE NO PROTECTION AGAINST SEIZURE.—CASE OF THE TUSCALOOSA.

20 June, 1863, vol. 4, p. 198.

The Tuscaloosa, formerly the Conrad, arrived at Cape Town as a tender of the Alabama. The following extracts from the diary of one of the officers of the Alabama states the circumstances of her arming:

See also Russell to Adams, Oct 29, 1863, v. 3, p. 203.

June "20th. Two vessels in sight. Gave chase to a bark. The wind being light and darkness coming on, got up steam and lowered propeller. At 7:50 p. m., I boarded and took possession of the bark Conrad, of Philadelphia, Buenos Ayres to New York, laden with wool. Sent captain and mates on board the Alabama. Prize hove to; (received written instructions) Stood after the other vessel. Lost her in the darkness, so stood again for prize. 11:30. Hove to till daylight.

"21st, Sunday.—*Preparing the prize for commissioning as a Confederate vessel of war. Sent on board her provisions, coals, and the two brass guns taken from the Talisman, with a quantity of small arms. At* 5 *p. m., she fired a gun, hoisted the Confederate flag and pennant; both ships crews manning the rigging and giving three cheers. She was then finally declared commissioned as the Confederate States bark Tuscaloosa, Lieutenant Commanding Low, late junior lieutenant of the Alabama.*"

The Conrad thus became the Tuscaloosa; her flag and Low's commission gave her all the rights of protection which a similar flag and Semmes' commission gave to the Alabama.

In August, 1863, the Alabama and the Tuscaloosa arrived at the Cape of Good Hope.

The United States Consul demanded that the Tuscaloosa be seized.

Governor Wodehouse consulted with his Attorney General and arrived at this conclusion:

Wodehouse to Walker 10 Aug., 1863, vol. 4, p. 219,

> "If the vessel received the two guns from the Alabama or other Confederate vessel of war, or if the person in command of her has a commission of war, or if she be commanded by an officer of the Confederate Navy, in any of these cases there will be a sufficient setting forth as a vessel of war, to justify her being held to be a ship of war."

Consequently as she had guns on board of her, and as a Confederate officer had command of her, she was allowed to repair and depart unmolested as was also the Alabama. Very naturally the Governor thought that if a Confederate commission protected the Alabama it also protected the Tuscaloosa.

Governor Wodehouse reported his action to the home government and this is the answer sent by the Duke of Newcastle:

Newcastle to Wodehouse, 4 Nov 1863, v. 3, p. 207. "With respect to the Alabama herself, it is clear that neither you nor any other authority at the Cape could exercise any jurisdiction over her; and that, *whatever may have been her previous history, you were bound to treat her as a ship of war belonging to a belligerent power* (*sic.*)

"With regard to the vessel called the Tuscaloosa, I am advised that this vessel did not loose the character of a prize captured by the Alabama merely because she was, at the time of her being brought within British waters, armed with two small rifled guns, in charge of an officer, and manned with a crew of ten men from the Alabama, and used as a tender to that vessel under the authority of Captain Semmes."

He says that the Governor's decision was "not consistent with Her Majesty's undoubted right to determine within her own territory whether her own orders made in vindication of her own neutrality have been violated or not," and adds:

"The question remains what course ought to have been taken by the authorities of the Cape.

"1st. In order to ascertain whether this vessel was, as alleged by the United States Consul, an uncondemned prize brought within British waters in violation of Her Majesty's neutrality; and

"2d. What ought to have been done if such had appeared to be really the fact.

"I think that the allegations of the United States Consul ought to have been brought to the knowledge of Captain Semmes while the Tuscaloosa was still within British waters, and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa papers. *If the results of these inquiries had been to prove that the vessel was really an uncondemned prize brought into British waters in violation of Her Majesty's orders made for the purpose of maintaining her neutrality, I consider that the mode of proceeding in such circumstances, most consistent with Her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners.* (*sic.*)

Note the distinction here made between the Alabama and Tuscaloosa.

The action of the Government in this case was renewed both in the House of Lords and in the House of Commons. See vol. 5, pp. 530–576. Hansard, vol. 174, pp. 1595–1617, pp. 1777–1859.

The debate in both Houses of Parliament was very interesting.

In the House of Lords Earl Russell sustained the dispatch of the Duke of Newcastle, and said:

> "It must be recollected that all these applications of principles of international law to the contest between the Federals and so-styled Confederate States, have to be made under very exceptional circumstances. It has been usual for a power carrying on war upon the seas to possess ports of its own in which vessels are built, equipped and fitted, and from which they issue, to which they bring their prizes, and in which those prizes, when brought before a court, are either condemned or restored. But it so happens that in this conflict the Confederate States have no ports except those of the Mersey and the Clyde, from which they fit out ships to cruise against the Federals."
>
> He said further: "It struck Sir Baldwin Walker, as I think it would have struck any one else, that if Confederate ships of war were to be allowed to send in prizes with their cargo on board, and by putting one or two guns and a Confederate officer on board to call them ships of war, the policy of Her Majesty's Government would be defeated, and Her Majesty's proclamation would become null and void. They would send in their prizes with a couple of guns and an officer, who, having sold first the cargo and then the vessel, would return to his ship; and this process might be repeated with any number of prizes. Thus Her Majesty's neutrality would become a mere name. * * *
>
> "It is certainly true that there are cases decided by the courts of the United States in which vessels have come in as vessels of war, and, nevertheless, the courts have, after argument, ordered them to be restored to their owners, and they have been so restored."

In the House the question was discussed on a motion affirming that the instructions given to Governor Wodehouse by the Duke of Newcastle were at variance with the principles of international law. A very long and full debate took place. The Solicitor General, the Attorney General and others sustained the Government; Sir Hugh Cairns and others opposed. The Government was not sustained, the vote standing 219 to 185.

When we remember the prejudices that existed against the United States this vote is not large, even though the position apparently established is so untenable.

I quote from the Attorney General, Sir Roundell Palmer, to show that the Tuscaloosa should have been seized, and that the dispatch of the Duke of Newcastle was just and proper. He says, speaking of that dispatch:

"I am prepared to maintain with confidence that no principle inconsistent with international law is expressed in any part of this passage. The case assumed is that either of a willful violation or fraudulent evasion of the orders issued by the British Crown for the maintenance of our neutrality, that violation or evasion taking place within the territory of Great Britain. That is the state of facts which raises the principle involved. The rest is merely a question of discretion and moderation in carrying out the principle. *Can it be said that a neutral sovereign has not a right to make orders for the preservation of his own neutrality, or that any foreign power whatever violating these orders, provided it be done willfully or fraudulently, is protected to any extent by international law within the neutral territory, or has any right to complain on the ground of international law of any means which the neutral sovereign may see fit to adopt for the assertion of his territorial rights?* By the mere fact of coming into neutral territory in spite of the prohibition, a foreign power places itself in the position of an outlaw against the rights of nations; and it is a mere question of practical discretion, judgment and moderation what is the proper way of vindicating the offended dignity of the neutral sovereign."

A truly "practical discretion and judgment" would have seized the Alabama and thus vindicated the law which she had violated and prevented the destruction which she afterwards caused.

IF THE FLAG AND COMMISSION DID NOT PROTECT THE TUSCALOOSA, NO MORE DID IT PROTECT THE ALABAMA.

The speech of the Attorney General shows that the fact that a vessel has a commission as a regular war vessel of a recognized belligerent, does not in itself compel a neutral government to allow it to enter and depart from its ports freely and unquestioned.

If the Attorney General could justify the order to seize the Tuscaloosa, even though she had a Confederate commission and a Confederate flag, on the simple ground that she had violated Her Majesty's orders forbidding any prize to be brought into her ports, the giving of which orders was a mere question of neutral policy, which Great Britain had a perfect right to adopt or not as she pleased, then most certainly she could have seized either the Florida, Alabama, Georgia, or Shenandoah, when they first entered her ports, for they had been built and equipped in violation not only of her policy but of her international duty, and roamed the seas an admitted scandal and reproach to her laws. If Great Britain had a right to question the nationality and ownership of the Tuscaloosa, then most certainly she could have seized the Alabama and shown that she was willfully built, and equipped and armed, in direct violation of Her Majesty's duty and laws.

The Attorney General justified the seizure of the Tuscaloosa without any regard to her Confederate commission or flag, simply because she had violated a rule of Her Majesty, and should he not have ordered the seizure of the Alabama when she had violated not only a rule of policy but a law of international obligation?

The Solicitor and Attorney General each maintained the principle that when a neutrality had been violated, it was a question for the neutral to determine in what manner he should vindicate his neutrality, and that the United States had acted on that principle for upwards of seventy years.

Whenever, therefore, it is said that the Confederate commission prevented Great Britain from in any way seizing the Alabama or punishing her for an admitted violation of English laws and neutrality, the United States can refer to the case of the Tuscaloosa and say it was a matter entirely within your "discretion, judgment and moderation," certainly it was within your power. You chose not to exercise that power, and in accordance with the principles, heretofore admitted by us to you, we demand compensation.

Read again these words of the Attorney General:

Vol. 5, p. 570, 26 Apr 1864.

Hansard v. 174, pp. 1595–1617.

"Can it be said that a neutral sovereign has not a right to make orders for the preservation of his own neutrality, or that any foreign power whatever violating these orders, provided it be done willfully or fraudulently, is protected to any extent by international law within the neutral territory, or has the right to complain on the ground of international law of any means which the neutral sovereign may see fit to adopt for the assertion of his territorial rights? By the mere fact of coming into neutral territory in spite of the prohibition a foreign power places itself in the position of an outlaw against the rights of nations; and it is a mere question of practical discretion, judgment and moderation, what is the proper way of vindicating the offended dignity of the neutral sovereign."

Can the law officers which justified these words maintain that Great Britain used all means in her power to prevent the destruction by the Florida and other cruisers?

CASE OF THE RAPPAHANNOCK AT CALAIS.

Here is another authority to show that a Confederate flag and Commission did not give absolute protection.

A screw gunboat built for the Crown was sold to private individuals who pretended that she was intended for the China trade, but in reality she was intended for the Confederates.

This is the story of her escape and commissioning as given by the Solicitor General to the jury on the trial of one Rumble, who had been concerned in fitting her out.

Vol. 4, p. 583.

"She was suddenly, in the night, taken out of the Thames to sea, and subsequently was taken to Calais. No sooner was the vessel at sea than the mask was cast off, and all disguise thrown away. The name changed to the Rappahannock; *a Confederate Captain came on board of her at Calais, who said he had been mate of the Alabama, and took possession of her as Captain; a fresh flag, the Confederate flag was hoisted; the officers appeared in uniform; there was no disguise; the character of the vessel was openly discussed; it was given out that she was a man-of-war;* the crew were called on deck; 'mustered' and required to sign what they called 'articles of war,' that is, articles for service; they were offered £8 a month, and £10 bounty, and prospects of prize money were held out, and the Captain said, 'I shall fight for my country and for glory, and you will fight for fame;' some pressure was put upon them at that time: they were in a foreign country without means of returning home, and many of them were unhappily induced to enlist. The preparations for equipment, which had been interrupted, were proceeded with; a number of boiler makers were sent for from England, and many of them were induced to leave their employment in the dock yard without leave, and when they returned they were discharged as being absent without leave; attempts were made to enlist more men; a large store of coals was taken in: but at this point the French Government stept in. The French Government, not choosing their ports to be made the scene of hostile operations, *interposed and prevented any further equipment of the vessel, and* *by the short and summary process of mooring a man-of-war across her bows, prevented her going out of the port, and she has been kept a prisoner in the harbor ever since."*

The Confederate flag and Commission did not protect the Rappahannock from the French man-of-war. This very same "summary process" should have kept the Florida and other British cruisers prisoners in British ports.

GREAT BRITAIN JUSTIFIES THE EMPLOYMENT OF FORCE TO PUNISH THE VIOLATION OF NEUTRAL RIGHTS.

In December, 1864, instructions were given by the Confederate Secretary of State to the Captain of the Confederate cruisers in regard to the treatment of neutral vessels captured by them. These instructions left the whole question of ownership and nationality of any ship captured, to be decided by the Captain of the cruiser, who, in his own cabin was directed to satisfy his mind as to the "great and decided preponderance of evidence," and if he found the same against the ship he was directed to act "on his conviction" and burn or destroy her. These instructions, in fact, only officially recognized and approved the previous conduct of all the Captains of Confederate cruisers, and Semmes on board the Sumter in 1861, had decided to burn ships and cargo in exactly the same manner as Waddell by these instructions was authorized to do on board the Shenandoah. But now the commerce of the United States had been nearly destroyed, and what remained had sought protection under the British flag. Under these circumstances Great Britain seems first to have perceived that the cruisers which had been fitted out in her ports, and had burned the ships of the United States, simply on a command from the quarter deck, were really pirates and violating all rules of international law.

Vol. 1, p. 621.

Vice-Admiral Hope, before these official instructions were given had written a letter to the Captain of the Florida calling his attention to the fact that the Martaban had been burnt at sea by the Alabama. Mr. Vernon Harcourt, (Historicus) reviewed the instructions of Mr. Benjamin, and the conduct of Admiral Hope in a letter to the London Times of January 11th, 1865. I quote from this letter to show what he thought the Government would be justified in doing to punish a violation of the rights of neutrals.

He says:

London *Times*, 11 Jan'y, 1865, vol. 4, p. 51.

> "The Confederate secretary complains of the English vice-admiral for having written that 'he had issued the following instructions to the officers under his command: To capture and send to England for adjudication in the Admiralty Court every vessel by which a British vessel (*i. e.* with legal British papers) is burnt at sea.' Admiral Hope made a mistake it is true, (as sea captains who quote Lord Stowell are not unlikely to do) in supposing that this was a case for 'adjudication in the Admiralty Court.' But substantially he was right in instructing the officers under his command to seize all vessels acting upon such principles as those laid down in Mr. Benjamin's instructions, for such conduct is a just cause of reprisal, and, if necessary, of war. *The only proper answer to such a code of instructions is to confiscate, or, if need be, to send to the bottom every vessel that should attempt to execute them.*"

Admiral Hope's orders and their justification by Historicus shows that Great Britain had a right to use force even on the high seas to prevent a violation of neutral rights, and could she not in her own ports have put some little restraint upon the vessels whose very existence was a violation of neutral rights?

The building and arming of the Alabama at Liverpool was a greater violation of neutral rights than the decision of her Captain to burn the Martaban, on "his conviction" that she belonged to a citizen of the United States.

A NEGLECT TO EMPLOY FORCE RENDERS COMPENSATION INCUMBENT.

In 1794, Washington for "particular reasons," preferred to give compensation to Great Britain for damages caused by certain French privateers fitted out in the ports of the United States.

What these "particular reasons" were we learn from the President's message to Congress. He says:

> "Rather than *to employ force* for the restitution of certain vessels I deemed the United States bound to restore, I thought it more advisable to satisfy the parties by avowing it to be my opin-

ion that *it would be incumbent* upon the United States to make compensation." (Annals of Congress, vol. IV, p. 15.)

In September, 1865, Her Majesty ordered (*ante, p.* 147,) all colonial authorities to detain the Shenandoah "by force if necessary." A similar order might have met the Florida, Alabama, Georgia, and Shenandoah at the first English port they entered, and thus the destruction to the commerce of the United States would have been prevented.

Having for some "particular reason" to use the words of Washington, neglected "to employ force" to prevent the destruction of the commerce of the United States, let England now, as did Washington, avow that it is incumbent upon her "to make compensation."

GREAT BRITAIN COULD HAVE ABSOLUTELY EXCLUDED THE FLORIDA AND OTHER CRUISERS FROM HER PORTS.

Even if Great Britain refused for "particular reasons" to withdraw the benefits of the Queen's proclamation from cruisers that had been built and armed in direct violation of the same, and though she was determined to recognize the flag and commission which really gave no semblance of legality, she certainly had it in her power to have prevented the destruction of the commerce of the United States by excluding from her ports cruisers that had been fitted out in violation of her neutrality.

To show that she had this power, I quote three English authorities. This is what Mr. Vernon Harcourt wrote in February, 1864: (*London Times*, Feb. 17, vol. 4, p. 202.)

> "Ought the Alabama to be admitted into our ports at all? Now it is a sound and salutary rule of international practice, established by the Americans themselves in 1794, that vessels which have been equipped in violation of the laws of a neutral state shall be excluded from that hospitality which is extended to other belligerent cruisers, on whose origin there is no such taint. Accordingly the cabinet of Washington compelled all the French privateers which had been illegally fitted out in America against England to leave the ports of the United States, and orders were issued to the custom house officers to prevent their return. This course of proceeding appears equally consonant to the principles of law and the dictates of policy. The question, then, remains,

was the Alabama unlawfully equipped and manned within the jurisdiction of Great Britain? Now, setting aside the vexed question of equipment, I think there can be very little doubt on that of enlistment. The question is one which from its very nature is not and cannot become the subject of judicial determination, because a neutral government cannot exercise jurisdiction over such a vessel. It is a matter on which the executive of the neutral government must, according to the best information it can obtain, form its own judgment, and that judgment is final and conclusive on all parties. Now, I observe, that in a dispatch dated 27th March, 1863, (Parliamentary paper, p. 2,) Lord Russell writes: 'The British Government has done everything in its power to execute the laws; but I admitted that the cases of the Alabama and the Oreto, were a scandal and in some degree a reproach to our law.' Now, with the greatest deference to those persons who may be of an opposite opinion, I submit that vessels, of which such a statement can be properly made—and that it was properly made no one acquainted with the circumstances of their outfit, and manning can honestly doubt—are not entitled to the hospitality of the country whose laws they have eluded and abused. I think that to deny to the Florida and to the Alabama access to our ports would be the legitimate and dignified manner of expressing our disapproval of the fraud which has been practised upon our neutrality. If we abstain from taking such a course, I fear we may justly lie under the imputation of having done less to vindicate our good faith than the American Government consented at our instance upon former occasions to do."

Vol. 5, p. 583, May, 13, 1864.

This is what the Attorney General said in a debate relative to the course of the Government in regard to the ship Georgia which had come into Liverpool.

Hansard, v. 175 pp 467, 514.

"I have not the least doubt that we have a right, if we thought fit, to exclude from our own ports any particular ship, or class of ships, if we consider that they have violated our neutrality."

Her Majesty's commissioners authorized to inquire what changes ought to be made in the neutrality laws for the purpose of giving them increased efficiency and bringing them into full conformity with her international obligations all joined in this recommendation, (*ante*, *p.* 219.)

"In time of war no vessel employed in a military or naval service of any belligerent which shall have been built, equipped, fitted out, armed or dispatched contrary to the enactment should be admitted into any port of Her Majesty's dominions."

From these several authorities we learn that the United States compelled all the French privateers which had been illegally fitted out against England to leave the ports of the United States and not to return; that Her Majesty's law officers admitted that it was simply a question of discretion, whether the Government should allow the Florida, Alabama, Georgia and Shenandoah to enter any English port, and that after the Shenandoah, the last of these cruisers, against the most earnest protest of the United States consul had been allowed to refit at Melbourne for the destruction of the whaling fleet of the North Pacific, and having accomplished that destruction had returned home to Liverpool, even those of Her Majesty's commissioners who had condemned the seizure of the Alexandra and Lairds rams joined in a report which in effect said that neither the Florida, Alabama, Georgia or Shenandoah should ever have been admitted into an English port.

England's power to have prevented these vessels from entering her ports is therefore fixed beyond all doubt. It is equally certain that in her ports each of those vessels received aid and supplies without which they would have been practically unable to destroy the commerce of the United States.

Is not the liability to compensate for this destruction thus fixed with equal certainty upon that government which refused to employ an admitted and recognized means of preventing the same?

OTHER MEANS WITHIN THE POWER OF GREAT BRITAIN.

But not only was it possible for Great Britain to have prevented the damage by the Florida, Alabama, and other cruisers by direct proceedings against the vessels before or after their escape, but the escape of other vessels might have been prevented.

First. By a prosecution of the agents who had been engaged in the equipment of the Alabama and Florida.

Second. By direct representations to the Confederate government whose agents were actively engaged in projecting further scandals and reproaches on England's laws and neutrality.

ATTEMPTED PROSECUTIONS OF INDIVIDUALS FOR VIOLATION OF THE NEUTRALITY LAW.

Not a single trial of any individual under the Foreign Enlistment Act was concluded till November, 1864, at which time the Shenandoah, the last of the cruisers, was on her way to Melbourne with a British crew.

Notice this memoranda of the several trials which did take place.

The trial of Jones and Highatt who had recruited for various rebel cruisers, particularly for the Georgia, was begun 13th June, 1864, (*ante*, p. 105.)

They were convicted in November, of the same year and fined fifty pounds each.

On 4th May, 1864, one Rumble was indicted for being concerned in the equipment of the Rappahannock. In February, 1865, he was acquitted.

In June, 1864, one Campbell was indicted for having induced a number of men to enlist on the Georgia. He pleaded guilty, and was allowed to depart on his own recognizance.

James Cunningham was indicted in July, 1864, for having enlisted on board the Rappahannock, was found guilty and released on his own recognizance.

John Seymour, in July, 1864, pleaded guilty and was dismissed on his own recognizance.

Captain Corbett who had been actively concerned in equipping the Sea King (Shenandoah) and been sent home by consul Grattan, (*ante*, *p.* 111,) was indicted in January, 1865, and in December of the same year the jury returned a verdict of not guilty.

On 25th November, 1864, after the trial of Jones & Highatt, Mr. Dudley wrote to Mr. Seward, (See *ante*, p. 105:)

> "The Florida, Alabama, Georgia, Georgiana, and Sea King, (Shenandoah) all built, fitted out, armament made, ammunition supplied, crews enlisted in the country, and here paid while serving in the vessels, and coaled from England, and thus far three men alone tried, and they fined but fifty pounds apiece, making the sum total of one hundred and fifty pounds."

Mr. Dudley would not need to change this letter to-day, except to add that certain other men were afterwards tried and acquitted, or pleading guilty were released without punishment.

NO REMONSTRANCES OR PROTESTS WERE MADE AGAINST THE ACTIONS OF THE CONFEDERATE AGENTS AT LIVERPOOL.

The affidavit of paymaster Yonge, (*ante*, p. 92,) shows for what purpose Captain Bullock was sent to England in 1861.

There he remained till 1865, when we find him instructing Waddell to take the Shenandoah to a neutral port. During all this time he was practically Secretary of the Confederate navy, with his office at Liverpool.

There he contracted for his ships; from thence he armed and equipped them; from thence he sent them coals and supplies; there he engaged his sailors and gave half pay to their wives, and from thence he directed the voyages of the cruisers.

In every true sense, Liverpool formed the base of all the naval operations of the insurgents upon the ocean.

We have seen (*ante*, p. 156) that the cruisers sailed with blank Confederate Commissions ready to be filled up as occasion required. But some were filled up at Liverpool, and this is a copy of one which Captain Bullock gave to Paymaster Yonge on the day the Alabama was waiting at Moelfra Bay for the Hercules to come down from Liverpool with part of her crew, and on the day after the law officers had decided to seize her.

"LIVERPOOL, *July* 30, 1862.

Vol. 3, p. 133.

"SIR: By virtue of authority granted me by the Hon. S. B. Mallory, Secretary of the Navy of the Confederate States, I hereby appoint you an Acting Assistant Paymaster. This appointment to date from the 21st day of December, 1861.

Very respectfully,

JAMES D. BULLOCK,
Commander Confederate States Navy.

"To Clarence R. Yonge."

This commission shows the authority and power that was given to Captain Bullock. A copy of this commission and the instructions which preceded it were sent to Earl Russell in March, 1863, but the character and agency of this man Bullock had been established by affidavits sent him by Mr. Adams in July, 1862.

And yet it does not appear that even a remonstrance was made to the Confederate Government whose agent he was in equipping and sending out the Florida, Alabama and other cruisers.

From 1861 to 1865, very frequent protests and remonstrances were made by Earl Russell to the Government of the United States on account of certain unintended violations of neutral rights. I note particularly the instructions to Lord Lyons to demand the return of Messrs. Slidell and Mason and an apology for what was called an affront to the British flag. But not till some time in 1865, is there a single remonstrance against the acts of Captain Bullock and the other Confederate agents on account of their attempted, organized, and perfected violation of England's neutrality nor was even a remonstrance made against the acts of the Captains of the Florida and Alabama, who on their own quarter deck had decided to burn or release the property of Englishmen.

Note this letter written by Earl Russell to Messrs. Mason, Slidell and Mann, on 25th November, 1864.

"FOREIGN OFFICE.

"Gentlemen: I have had the honor to receive the copy which you have sent me of the manifesto issued by the Congress of so-called Confederate States of America.

Russell to Conf. Com. 25 Nov,'64 Rev 1, p 618.

"Her Majesty's Government deeply lament the protracted nature of the struggle between the Northern and Southern States of the formerly united Republic of North America.

"Great Britain has, since 1783, remained with the exception of a short period, connected by friendly relations with both the Northern and Southern States. Since the commencement of the civil war which broke out in 1861, Her Majesty's Government have continued to entertain sentiments of friendship equally for the North and for the South. Of the causes of the rupture Her Majesty's Government have never presumed to judge. They deplore the commencement of this sanguinary struggle, and anxiously look forward to the period of its termination. In the meantime they are convinced that they best consult the interests of peace, and respect the rights of all parties by observing a strict and impartial neutrality.

"Such a neutrality Her Majesty has faithfully maintained, and will continue to maintain.

"I request you, gentlemen, to accept the assurances of the very high consideration with which I have the honor to be, gentlemen, your most obedient humble servant,

"RUSSELL."

On 13th December, 1864, Mr. Slidell wrote to Mr. Benjamin, Confederate Secretary of State, as follows in regard to the letter last quoted:

Slidell to Benjamin, 13 Dece., 1864, vol. 1, p. 619.

> "His Lordship voluntarily went out of his way to say the most disagreeable things possible to the Northern government; his reference to the treaty of 1783, will, I think, be especially distasteful to them, placed in connection with his twice repeated recognition of the separate existence of the North and South—as never merged in a single nationality. I should be much surprised if this letter does not call forth a universal howl against his lordship from the Northern press."

At the time Earl Russell wrote this letter which so pleased Mr. Slidell he could have had no doubt that Mr. Mason and the other commissioners to whom it was addressed were actively engaged in procuring, building, fitting out, and dispatching vessels of war for the insurgents from the ports of Great Britain, for Mr. Adams at various times had furnished to him evidence which established this fact all but conclusively, and on the 9th February, 1863, had transmitted to him copies of intercepted correspondence between the authorities at Richmond and the Confederate agents at Liverpool.

The following letter was among those so transmitted:

Mallory to Mason, 30 Oct., 1862, v. 1, p. 573.

> "CONFEDERATE STATES OF AMERICA,
> "NAVY DEPARTMENT, RICHMOND,
> "30 *October*, 1863.
>
> "SIR: Mr. Sanders has, as you are aware, contracted with this department for the construction in England of six iron-clad steamers, combining the capacities of the freighting and fighting ships in a manner which will enable them to force the blockade of our ports.
>
> "The interests of the country will be much benefited by the prompt construction of these vessels, and I beg leave to invoke your interest, not only in behalf of our enterprises already in progress, but in behalf of this also.
>
> "I have the honor to be, very respectfully, your ob't serv't,
> "S. R. MALLORY."

In transmitting the letter last quoted and other intercepted letters, Mr. Adams thus wrote to Earl Russell:

Adams to Russell, 9 Feb., 1863, v. 1, p. 562.

> "Taken as a whole, these papers serve most conclusively to show that no respect whatever has been paid in her own realm by these parties to the neutrality declared by Her Majesty at the outset of these hostilities and that so far as may be in their power, they are bent on making her Kingdom subservient to their purpose of conducting hostilities against a nation with which she is at peace. I trust I may be permitted to add that if my government could have been induced in any way to initiate similar operations within the limits of this Kingdom I should have regarded it as very justly subject to the remonstrances which your lordship has been pleased to address to me on account of acts of incomparably smaller significance."

Earl Russell having received and examined Mr. Mallory's letter and the others which had been transmitted by Mr. Adams, replied on 9th March, 1863, and said:

Russell to Adams, 9 Mch., 1863, v. 1, p. 578.

> "With respect to the building of iron-clad steamers for either belligerent government, although this is clearly prohibited by the Foreign Enlistment Act, Her Majesty's government do not find in this correspondence sufficient information that anything of that kind has actually been done within this country which could form matter for a criminal prosecution."

Even if Earl Russell did not find in the letter of Mallory to Mason any proof that Mason and the other Confederate agents had as "yet brought themselves within the reach of any criminal law of the United Kingdom," nevertheless, there was enough in this letter and in the other letters transmitted with it to have justified some such remonstrance as his lordship had been pleased to address to Mr. Adams "on account of acts of incomparably smaller significance." But no such remonstrance was made and in November, 1864, though the representations of Mr. Adams had been proven to be true in the cases of the Alexandra and of Lairds rams, yet his Lordship writes a letter to Mr. Mason and the other commissioners, who under the instructions of the Confederate Secretary of the Navy had given their aid to the prompt construction of these vessels, and in this letter, to quote the words of Mr. Slidell, His Lordship "voluntarily went out of his way to say the most disagreeable things possible to the Northern government."

When we remember the circumstances under which this letter was written, and consider what kind of a letter might and should have been written, then certainly the letter that was written should call forth as Slidell said a "universal howl."

EARL RUSSELL'S LETTER CONTRASTED WITH THE ACTS OF WASHINGTON AND JEFFERSON IN 1794.

In strong contrast to the treatment Bullock, Mason, and other Confederate agents received at the hands of Earl Russell, notice how Washington acted towards M. Genet and other French agents in 1794.

France and Great Britain were at war, France had been a faithfull ally, and Great Britain was a recent enemy. Citizens of the United States sympathized strongly with France, but Washington was determined that the new Republic and its citizens should remain neutral. M. Genet had been recognized as the Minister of France and acting under instructions, had sought to equip privateers from the ports of the United States. Washington had decided that such equipments were unlawful; had forbidden the vessels so equipped to enter the ports of the United States; had endeavored to punish citizens who had aided in equipping them; had returned the prizes brought in by the vessels so equipped; had promised compensation to Great Britain for the prizes not returned, and all this in the face of a most decided popular opinion in favor of M. Genet, who threatened to appeal to the people. Let any one read the fifth volume of Marshall's life of Washington, or the fifth volume of the History of the Republic by Hamilton, who would appreciate the difficulties which President Washington labored under at this time when public opinion was very much divided, when no neutrality law existed, and when practically no military or naval forces were at his command.

It was finally determined by the President and his cabinet that the recall of M. Genet should be asked and then was written to Mr. Morris, at that time United States Minister to France, a most able letter by Mr. Jefferson, justifying the course of neutrality adopted by the United States and calling the attention of the French Government to the attempted violation of the same by M. Genet. This letter can be found in the 1st vol. of American States Papers, p. 137 to 157. It could be well quoted here entire to show how unjustifiable has been the conduct of Great Britain from 1861 to 1865, towards the insurgents and their agents, but I can only make a few extracts.

Mr. Jefferson says:

"M. Genet asserts his right of arming in our ports, and of enlisting our citizens, and that we have no right to restrain him or punish them. *Examining this question under the law of nations founded on the general sense and usage of mankind, we have produced proof from the most enlightened and approved writers on the subject* that a neutral nation must in all things relating to the war, observe an exact impartiality towards the parties; that favors to one to the prejudice of the other would impart a fraudulent neutrality of which no nation would be the dupe; that no succor should be given to either unless stipulated by treaty, in men, arms, or anything else directly serving for war. That the right of raising troops being one of the rights of sovereignty and consequently appertaining exclusively to the nation itself, no foreign power or person can levy men within its territory without its consent, and he who does, may be rightfully and severely punished; *that if the United States have a right to refuse the permission to arm vessels and raise men within their ports and territories, they are bound by the laws of neutrality to exercise that right and to prohibit such armaments and enlistments.*

"To these principles of the law of nations, M. Genet answered, by calling them 'diplomatic subleties' and 'aphorisms of Vattel and others.' But something more than this is necessary to disprove them, and till they are disproved *we hold it certain that the law of nations and the rules of neutrality forbid our permitting either party to arm in our ports.*" * * * *

Speaking of what M. Genet had done, the letter continues:

"When the Government forbids their citizens to arm and engage in the war, he undertakes to arm and engage them. When they forbid vessels to be fitted in their ports for cruising on nations with whom they are at peace he commissions them to fit and cruise.

"His Government will see, too, that the case is pressing; that it is impossible for two sovereign and independent authorities to be going on within our territory at the same time without collision. They will forsee that if M. Genet perseveres in his proceedings, *the consequences will be so hazardous to us*, the example so humiliating and pernicious that we may be forced to suspend his functions before a successor can arrive to continue them."

Note that in this letter Washington and his Cabinet considered that they were bound by the laws of neutrality to prevent the fitting out of vessels in the ports of the United States.

The President had dismissed the French consul at Boston because he had attempted to prevent the seizure of a prize which had been brought in by a privateer fitted out in some port of the United States, and thinking that the French Government might not recall M. Genet and apparently doubting his own authority to dismiss him, Hamilton prepared for him a message to Congress which set out the organization of several hostile expeditions by the French envoy, and declared:

Hamilton's Life of the Republic, v. 5, p. 495.

"Proceedings so *unwarrantable, so derogatory to the sovereignty of the United States, so dangerous in precedent and tendency*, appear to render it improper that the person chargeable with them should longer continue to exercise the functions and enjoy the privileges of a diplomatic character. The supercedure of the exercise of those functions, nevertheless, being a measure of great delicacy and magnitude,' 'the President,' had concluded not to come to an ultimate determination, without first placing the subject under the eye of Congress. But unless either branch of the Legislature should signify to him their disapproval of it, that he should consider it his duty to adopt that measure after the expiration of a specified time."

This message was not communicated to Congress, for the letter of Mr. Jefferson to Mr. Morris accomplished its purpose, and the French Government disavowed the acts of M. Genet and sent out a new Minister.

Such were the means which the Government of the United States employed to prevent the destruction of the commerce of Great Britain. Contrast this story of the neutrality of the United States between England and France, with the story of England's neutrality between the United States and rebels.

In 1793 the United States demanded that France, its old ally, should recall her fully accredited minister who persisted in violating its neutrality to the damage of Great Britain its recent enemy. Great Britain from 1861 to 1865, made not a single remonstrance to the agents of the insurgents to whom it had given belligerent rights, but whose existence as a nation it in no way acknowledged, though these agents were clearly proven by the evidence transmitted by Mr. Adams to have been actively engaged in building and equipping vessels for the destruction of the commerce of the United States, and though even Earl Russell admitted that the escape of these vessels was a scandal and reproach to England's laws. If it be said that it was not possible for England to communicate with the Confederate Government, then I say a government with whom no official relations were possible should not have been recognized as a belligerent, and its cruisers should not have been welcomed for four years in the ports from which they had been fraudulently dispatched. If remonstrance was impossible then all the more was it incumbent upon the Government of Great Britain, to have used other means within its power to have prevented the damage done by the Florida and other cruisers.

A letter already quoted shows that it was possible for Earl Russell to write to the Confederate agents in a manner to make the North "howl," that same pen could have made the Confederate agents "howl" and prevented the destruction of the mercantile marine of the North.

FINAL ATTEMPTS AT REMONSTRANCE AGAINST THE ACTS OF THE CONFEDERATE AGENTS.

As before said not a complaint was made against the acts of the Confederate agents in England till 1865. That remonstrance came too late to accomplish any purpose except to condemn Great Britain for not having made the same in 1861.

The instructions of Mr. Benjamin to the Captains of Confederate cruisers had been published in England on 29th December, 1864. We have already seen (*ante, p.* 239,) how Historicus condemned these instructions in a letter published in the London *Times* of January 11th, 1865. In that same letter he said:

London Times, 11 Jan., 1865, vol. 4, p. 52.

> "The Confederate cruisers, so far as they have had any cruisers, have all, or nearly all, issued from English ports. Perhaps the consideration that any vessels which shall in future reach a similar destination will cruise against English commerce under orders nothing short of piratical, may act as a stronger motive to induce English merchants and ship builders to abstain from attempts to violate and elude the law. It certainly would be a strange example of an "engineer hoist by his own petard," if Liverpool merchantmen were to be seen burning on the high seas by the act of cruisers sent out from Liverpool to execute the "instructions" of Mr. Benjamin. Whatever else these instructions may accomplish, I hope at least they will secure that no Confederate cruiser shall ever again hail from an English port."

It seems to me that these instructions of the Confederate Secretary of State induced the English Government in February, 1865, finally to remonstrate against the actions of the Confederate agents lest it should present, to quote Mr. Harcourt, a strange example of an "engineer hoist by his own petard."

Certain it is that now in February, 1865, the Government made a simple remonstrance, which same remonstrance could have been more easily and properly made in 1861.

These are the circumstances under which Mr. Adams learned of the remonstrance. On the 15th February, 1865, Earl Russell sent for him and the next day he writes Mr. Seward this account of the interview which took place between them.

Adams to Seward, 16 Feb., 1865, v. 1, p. 626.

"His lordship said he had asked to see me in order to let me know the result of the deliberations of the cabinet in American affairs. * *

* * * * •

"With respect to the difficulties that had been occasioned on this side by the proceeding of the Confederate agents and their friends, in fitting out vessels and enlisting men to carry on the war, from this country as a base, the Cabinet have come to a determination. This was to direct him to address a letter to the three persons who had some time since written to him as authorized agents of the Confederates at Richmond, on another subject, Messrs. Slidell, Mason and Mann. These persons were believed to be, all of them, now at Paris. Such a letter had accordingly been prepared. He proposed now to read to me its contents, accordingly he read it over slowly and deliberately. After he had finished, it was proposed to furnish me with a copy for my government. He had already, on Monday, sent the letter to Lord Cowley, at Paris, to be forwarded to its address. In order to be still more sure of its destination, however, he proposed to send a duplicate to Washington with a request, that through the channels of communication which appear to have been established between that place and Richmond, it might, if thought proper, be transmitted by us.

"I then said that I had listened to the reading of the letter with much satisfaction. That I could not at the moment, say what view my Government would take of it or of the proposition to transmit it through its agency. I could, myself, perceive no objection. Possibly the other side might be disposed to refuse to receive it, because it came in that way. His Lordship remarked that he had first sent it directly to the agents to guard against that difficulty. He alluded to the refusal of the Government to permit a vessel to pass on a former occasion, as having been based upon other reasons which did not seem to apply to this case. *I said it had always seemed to me a matter of surprise that some course of this kind had not been earlier taken.* The proceedings complained of were a most outrageous kind. Indeed, so far as I could remember, a deliberate systematic attempt like this to conduct a naval war from the territory of a neutral power was wholly unprecedented.

* * * * *

"The closing remark of His Lordship, as I took my leave was significant: Alluding to the possibility of a failure of this letter in producing any effect, he remarked that the question would be of going on. To which I replied, that I hoped it might prove equally convenient to us whether the one party should be made to stop or the other to go on."

I now extract from the letter of Earl Russell to the Confederate agents. This is the first remonstrance against four years organized violation of England's neutrality.

Russell to Con'e Com. 13 Feb 1865 v. 1, p. 630.

"Some time ago I had the honor to inform you, in answer to a statement which you sent me, that Her Majesty remained neutral in the deplorable contest now carried on in North America, and that Her Majesty intended to persist in that course.

"It is now my duty to request you to bring to the notice of the authorities under whom you act, with a view to their serious consideration thereof, the just complaints which her Majesty's Government have to make of the conduct of the so-called Confederate Government. The facts upon which these complaints are founded, tend to show that Her Majesty's neutrality is not respected by the agents of that Government, and that undue and reprehensible attempts have been made by them to involve Her Majesty in a war in which Her Majesty has declared Her intention not to take part.

"In the first place I am sorry to observe that the unwarrantable practice of building ships in this country to be used as vessels of war, against a State with which Her Majesty is at peace, still continues. Her Majesty's Government had hoped that this attempt to make the territorial waters of Great Britain the place of preparation for warlike armaments against the United States, might be put an end to by prosecutions and by seizure of the vessels built in pursuance of contracts made with the Confederate agents. But facts which are, unhappily, too notorious, and correspondence which has been put into the hands of Her Majesty's Government, by the minister of the Government of the United States, show that resort is had to evasion and subtlety in order to escape the penalties of the law; that a vessel is brought in one place; that her armament is prepared in another, and that both are sent to some distant port beyond Her Majesty's jurisdiction, and thus an armed steamship is fitted out to cruise against the commerce of a power in amity with Her Majesty. A crew composed partly of British subjects is procured separately; wages are paid to them for an unknown service. They are dispatched, perhaps, to the coast of

France, and there or elsewhere are engaged to serve in a Confederate man-of-war.

"Now, it is very possible that by such shifts and stratagems the penalties of the existing law of this country, nay, of any law that could be enacted, may be evaded; but the offense thus offered to Her Majesty's authority and dignity by the *de facto* rulers of the Confederate States, whom Her Majesty acknowledges as belligerents, and whose agents in the United Kingdom enjoy the benefit of our hospitality in quiet security, remains the same. It is a proceeding totally unjustifiable, and manifestly offensive to the British Crown."

"Secondly, the Confederate organs have published, and Her Majesty's Government have been placed in possession of it, a memorandum of instructions for cruisers of the so-called Confederate States, which would, if adopted, set aside some of the most settled principles of international law, and break down rules which Her Majesty's Government have lawfully established for the purpose of maintaining Her Majesty's neutrality. * *

"You may, gentlemen, have the means of contesting the accuracy of the information on which my foregoing statements have been founded; and I should be glad to find that Her Majesty's Government have been misinformed, although I have no reason to think that such has been the case. If, on the contrary, the information which Her Majesty's Government have received with regard to these matters cannot be gainsaid, I trust you will feel yourselves authorised to promise, on behalf of the Confederate Government, that practices so offensive and unwarrantable shall cease and shall be entirely abandoned for the future. I shall, therefore, await anxiously your reply, after referring to the authorities of the Confederate States.

This letter in effect says that the fitting out of the Florida and Alabama in 1862 by the Confederate agents in Liverpool was "totally unjustifiable and manifestly offensive to the British Crown." But the letter does not explain, nor was it possible to satisfactorily explain why that act had never before been remonstrated against.

The letter was certainly a mild one. There was nothing in it to make Mr. Slidell "howl." It had none of the fire that characterized the dispatch to Lord Lyons, instructing him to demand the return of Messrs. Mason and Slidell. In the one case Earl Russell threatens war if an unauthorized act was not apologized for, and in the other case he asked the very agents who by direct authority had for nearly three years violated England's neutrality to promise that they would do so no more, and a Government which had no belligerent rights on the ocean except those which the Queen's proclamation had given it, was simply asked to withdraw the orders which had been given to the captains of the cruisers that had been built in British ports, instructing them to burn a British ship or cargo, "leaving to their Government the responsibility of satisfying any neutral claim for her value."

How Messrs. Mason and Slidell received this remonstrance does not appear. The copy which was delivered to Mr. Adams was sent by General Grant through the lines to General Lee. This was the answer received:

"HEADQUARTERS C. S. ARMY,
March 23, 1865.

Lee to Grant, 23 Mar., 1865, vol. 1, p 640.

"General,—In pursuance of instructions from the Government of the Confederate States, transmitted to me through the Secretary of War, the documents recently forwarded by you are respectfully returned.

"I am directed to say 'that the Government of the Confederate States cannot recognize as authentic a paper which is neither an original nor attested as a copy; nor could they under any circumstances consent to hold intercourse with a neutral nation through the medium of open dispatches sent through hostile lines after being read and approved by the enemies of the Confederacy.

"I have the honor to be, very respectfully, your obedient servant,
R. E. LEE, *General.*

"LIEUT. GEN. U. S. GRANT,
"*Commanding U. S. Armies.*"

What action the English Government would have taken on this reply of General Lee is uncertain, for in a few weeks he had surrendered to General Grant, and the authority of Mason and Slidell was gone.

What action the English Government should have taken, if it had made the same remonstrance in 1862 and received the same reply, is clear.

Attorney General Hoar, in an opinion given to Mr. Fish on 16th December, 1869, in effect says that no nation is entitled to receive the rights of a belligerent till it has shown itself capable of carrying on war and is in a position "to be held responsible to other nations for the manner in which it carries it on."

Such a nation the insurgents never were, and if General Lee's answer had been received in 1862, the proclamation which gave a Confederate flag and commission any protection in British ports should have been revoked.

Not only were the insurgents never in a position to be responsible to other nations for the manner in which they carried on war, but Great Britain does not seem to have ever considered that they were responsible or ought to be so held.

In the same month that Earl Russell made this first remonstrance to the Confederate agents the Governor at Melbourne remonstrated to the captain of the Shenandoah. The remonstrance of Earl Russell was returned by General Lee, and the Governor at Melbourne withdrew his least he should be reported to the Richmond Government.

Certainly Great Britain cannot claim that she used all the means in her power to prevent the destruction of the commerce of the United States when she did not till February, 1865, even protest against proceedings which, Earl Russell says, "were totally unjustifiable and manifestly offensive to the British Crown."

STATEMENT OF THE GROUNDS OF ENGLAND'S LIABILITY FOR THE ALABAMA CLAIMS.

Such then is our case against Great Britain for damages by all the vessels.

From the history of the United States and Great Britain it has been shown—

First. That each nation when belligerent has demanded that the other should use all the means in its power to prevent the fitting out and arming of hostile expeditions from its territory.

Second. That each nation has recognized that it is the duty of a neutral nation under the recognized rules and principles of international law to prevent its citizens from fitting out such expeditions.

Third. That in order to enable it to fulfil this duty, each nation has enacted a law fixing certain pains and penalties upon those who shall attempt to fit out such expeditions within its own territory.

Fourth. That the United States have made compensation to Great Britain for damages done by hostile expeditions, the escape of which the United States had failed to prevent by the use of all the means within its power.

It has been shown by reference to the dispatches, speeches, and reports of the several ministers, law officers, and commissioners of Her Majesty, that the English Government should have used and was bound to use all the means within its power to have prevented the building, equipping, arming, fitting out, and dispatching of the Florida, Alabama, Georgia, and Shenandoah from British ports.

The liability of England to compensate for the damages done by these vessels, is then fixed if the United States can show that the English Government did not use all the means in its power to prevent their escape, and to prevent the damage subsequently caused by them to the commerce of the United States.

Notice the means within her power which Great Britain failed to use to prevent the escape of these vessels.

First. She failed to use all the means in her power to enforce the law which she had enacted for that purpose.

Second. She failed to use means within her power to provide herself in 1861, with a law which would have given her the necessary means of prevention, which the United States law contained and which in substance Her Majesty's commissioners, in 1867, recommended should be added to the English neutrality law to bring the same into full conformity to Her Majesty's international obligations.

Notice also the means within her power which Great Britain failed to use to prevent the destruction of the commerce of the United States after these vessels had escaped.

First. She did not revoke the Queen's proclamation, which alone gave these vessels any right to reception in a British port or protection on any sea.

Second. She did not seize these vessels when they first came into her ports.

Third. She did not forbid these vessels to enter her ports.

Fourth. She did not forbid these vessels to coal, refit or obtain supplies in her ports.

Fifth. She did not even remonstrate against the acts of the agents of the insurgent Government who by express authority were for four years actively engaged in fitting out hostile expeditions from the ports of Great Britain against the commerce of the United States.

This statement of the case applies to all the vessels fitted out from the ports of Great Britain and establishes her liability for the damages occasioned by the Florida, Alabama, Georgia and Shenandoah alike. This liability is fixed even more strongly if we consider the case of each vessel separately.

ENGLAND'S LIABILITY AS SHOWN IN THE CASE OF EACH VESSEL FITTED OUT FROM HER PORTS.

In May, 1861, the insurgents as their representatives admitted, were entirely without a navy, and had no commercial marine out of which to improvise public armed vessels to any considerable extent. Under these circumstances they sought recognition of their flag upon the ocean, and under these circumstances the Queen's proclamation of 13th May, 1861, gave belligerent rights to cruisers which were not yet in existence.

Having obtained this desired recognition from Great Britain, the insurgents at last found a vessel that could receive the granted rights. The Havana, a merchant steamer that had plied as a packet ship between the port of that name and New Orleans, was fitted out at the latter port under the direction of the Captain Semmes who had just resigned his Commission as Commander in the navy of the United States.

On the last day of June, 1861, this vessel now known as the Sumter escaped from New Orleans and began her career of burning and destruction.

On the 3d July, 1861, she made her first prize. This is the account given of the capture given in "the cruise of the Alabama and Sumter," p. 17.

> At about 3 p. m., a sail was descried in shore beating to windward and steering a course that would bring her almost into contact with the Confederate vessel. To avoid suspicion no notice was taken of the stranger until the two vessels had approached within a little more than a mile from each other, when a display of English colors from the Confederate was answered by the stranger with the stars and stripes of the United States.

Down came the St. George's ensign from the Sumter's peak to be replaced almost before it touched the deck by the stars and bars which at that time constituted the flag of the Confederate States. A shot was fired across the bows of the astonished Yankee who at once hove to, and a boat was sent on board to take the Sumter's first capture. The prize proved to be the ship Golden Rocket, from the Yankee State of Maine. A fine ship of 690 tons burden, only three years old, and worth from $30,000 to $40,000. After taking the Captain on board, the Sumter set the prize on fire and left her to her fate."

Thus the destruction of the commerce of the United States was begun and in that first destruction the British flag assisted and afterwards contributed so to do till the end.

On the 30th July, the Sumter sailed boldly into the harbor of Trinadad and reported herself as being on a cruise She had then already captured eleven American vessels. She remained at Trinadad for six days, and was allowed to supply herself with coal and other necessary articles.

The English flag was hoisted on the Government flag staff on her arrival. The officers of Her Majesty's war vessel Cadmus appeared to be on amicable terms with those of the Sumter, and the merchant who supplied the Sumter with coals did it with the consent and approval of the Attorney General. (See letter of Bernard to Seward, 7th August, 1861, vol. 2, p. 485.)

Mr. Adams, by the direction of Mr. Seward, brought this extraordinary proceeding to the attention of Earl Russell and in case it should not be satisfactorily explained, he asked for the adoption of such measures as would insure on the part of the authorities of the island the prevention of all occurences of the kind during the continuance of the difficulties in America.

On the 4th of October, Earl Russell replies: (Vol. 2, p. 486.)

> "The commanding officer of the Sumter showed a commission signed by Mr. Jefferson Davis, calling himself president of the so-styled Confederate States.
>
> "The Sumter which was the vessel in question was allowed to stay six days at Trinadad and to supply herself with coals and provisions and the Attorney General of the Island perceived no illegality in these proceedings.
>
> "The law officers had reported that the conduct of the Governor was in conformity to Her Majesty's proclamation."

On the 29th October, Mr. Seward wrote to Mr. Adams after commenting on Earl Russell's letter last quoted, he says, (vol. 2, p. 486.)

> "In view of these facts it becomes my duty to instruct you to inform the British Government that the President deeply regrets that Lord Russell is altogether unable to give to our complaint a satisfactory solution.
>
> "When it is considered how important a part commerce plays on the interests of our country it will be seen that the United States cannot consent that pirates engaged in destroying it shall receive shelter and supplies in the ports of a friendly nation."

This remonstrance of Mr. Seward produced no effect and the Queen's proclamation which promised protection to a flag which had never been hoisted at a mast head now actually gave that protection when it first appeared in a British port, and continued to do so till Waddell lowered the flag of the Shenandoah at Liverpool in September, 1865.

During these four years this flag never was shown on the ocean except as a signal for destruction.

On the trial of the Florida at Nassau one witness Ward had sworn that there was a flag in the captain's cabin; that it had one white stripe and two red ones on each side of the stripe, and that in the corner there was blue with stars in it; but that he did not know the secession flag.

Reviewing the testimony of Ward, Judge Lees said, in the Admiralty Court at Nassau, "*I think it very wonderful that he should be so long both in Liverpool and here and not know the Confederate flag.*"

Comment is unnecessary, for but few sailors knew the Confederate flag unless they saw it in a British port.

The Sumter afterward went to Gibraltar, where she was hospitably received, but being blockaded by the United States steamer Tuscarora, and her boiler needing repairs, for which there were no facilities at Gibraltar, she was dismantled, and a pretended sale was made to an agent of Fraser, Trenholm & Co., of Liverpool, at which port she arrived on 17th February, 1863. She was there thoroughly refitted, sailed from thence heavily laden with cannon and stores, and was afterward wrecked attempting to enter Charleston.

The reception of the Sumter at Trinidad had established the fact that if the insurgents could only obtain war vessels these vessels would be freely admitted into British ports, and could there obtain supplies and receive the needed repairs though every port of the insurgents should be closed.

The ports of the Southern States were all blockaded, and even if they had not been they afforded no facilities for ship-building, and even if ships could have been built there it would have been necessary to have brought their armament through the blockade. Under these circumstances agents were sent to England, where ship-yards and foundaries abounded, and the keels of the Florida and Alabama were laid at Liverpool.

The English neutrality law was consulted, and it was found that it afforded no means as did the United States law for detaining a vessel on suspicion, therefore the Confederate agents said, "Let the work go on secretly."

Perhaps Edwards, Her Majesty's custom-house officer at Liverpool was consulted; or more probably Mr. Laird, ship-builder and member of Parliament, advised the Confederate agents that there was no ground of seizure under the English law till the vessel was armed. Therefore it was planned to fit the vessels all ready for their armament, and afterwards to send their armament from a British port, to meet them at an appointed place. In accordance with this plan the Florida, Alabama, Georgia and Shenandoah were each built, dispatched and received their armament.

CASE OF THE FLORIDA.

The Florida sailed from Liverpool on the 22d March, 1862, as the Oreto. The story of her building, escape and receptions has been already told. (*Ante*, pp. 49 to 68.)

More than thirty days before she sailed Mr. Adams had written Earl Russell that he and Consul Dudley had no doubt but that she was intended for the Southern Confederacy, and that when she sailed it would be to burn and destroy whatever she met with bearing the American flag, and in the same letter *he offered to procure other evidence in a more formal way.*

On the 26th February Earl Russell replied, transmitting a report of the Commissioners of Customs, to the effect that the Oreto had taken on board coals in ballast, and was pierced for guns, but that

Edwards, the collector at Liverpool, stated that he had every reason to believe that the vessel was for the Italian Government. This same officer, Edwards, was directed to watch the movements of the vessel. Of course he found nothing against her. It was his opinion that the vessel could not be seized unless she was armed, and his whole subsequent conduct shows that he desired that the Oreto and other vessels should escape.

Note what Mr. Dudley saw and reported on 1st March: She had taken in a large quantity of provisions and was getting as many Southern sailors as possible; she wanted a hundred and thirty men, and was waiting the arrival of her captain by the West Indian boat. And on March 5th he had learned that the guns were to be shipped by another boat to the West Indies, and one of the workmen in the employ of Fawcett, Preston & Co. had stated that she was for the Confederates.

On 22d March the Oreto was still in the river. Mr. Dudley had learned that the steamer Annie Childs had brought over various Confederate officers; that among them were Low, Yonge and Maffit; that it was understood by all on board that they were to take command of a vessel building in England for the Confederacy; that a dinner was given by the officers of the Oreto to the officers who came over in the Annie Childs, and that when she sailed she would make direct for Madeira and Nassau.

These were some of the suspicious circumstances which the United States consul saw. The result proved that all these suspicions were just and true.

Most certainly this vessel ought to have been detained and stopped. There was reasonable and probable cause for believing that she was being built, equipped and fitted out to make war on the United States commerce.

Under the United States law she would have been seized as was the Maury. In England she should have been seized as were the rams in 1863. If the statute does not give that power it existed in the rules of common and international law, and that it did not exist in England's statute law will only make England's liability greater.

Earl Russell said that the escape of the Oreto and the Alabama from Liverpool was a scandal and reproach to English law and he knew the facts.

ESCAPE OF FLORIDA FROM NASSAU.

The Florida went to Nassau as Consul Dudley reported she would do. Low and Maffit who had come on board the Childs directed her voyage. At Nassau she was seized by directions of Her Majesty's law officers. Captain Hickley of Her Majesty's vessel, Greyhound, made the seizure. At the trial he swore that he *found guns on board of her;* that she was capable of carrying guns; that she had shot boxes all around her upper deck; that she had no accommodation for the stowage of cargo; and that in his opinion she could, with her crew, guns, and ammunition going out with another vessel alongside of her be equipped in twenty-four hours for battle.

The Judge held that Captain Hickley's evidence was conclusive as to the fittings and construction of the vessel, but whatever were those fittings and construction, he held that they did not subject the vessel to forfeiture at Nassau.

If the judge was right in this decision, though the Florida had violated the neutrality law at Liverpool, she was entitled to the same protection at Nassau against punishment under that law as if she were in Mobile.

Either the decision of the Judge was wrong or the English neutrality law is adapted to protect those violations of international law which the American law was designed to prevent and punish.

But Earl Russell and the law officers of the Crown did not consider that the jurisdiction of the Vice Admiralty Court at Nassau was limited to a violation of the neutrality law at Nassau. Her seizure there had been ordered by them and Earl Russell had sought at Liverpool, for the purpose of sending for use on the trial at Nassau, the very evidence which Captain Hickley gave to Judge Lees, and which Judge Lees said was conclusive.

Subsequently the Alabama escaped from Liverpool and orders were sent to seize her if she should go to Nassau. Here again Her Majesty's law officers recognized the power to hold a vessel at Nassau for a violation of the law at Liverpool. Why no appeal was taken from the decision of the Judge at Nassau does not appear. If the orders of Earl Russell and the law officers to seize the Florida and Alabama at Nassau were founded on a proper construction of the neutrality law, then Judge Lees' decision was wrong, and if the decision of Judge Lees was right, then Her Majesty's law was most defective.

After Judge Lees had determined that he had no jurisdiction to punish a violation of the law at Liverpool, he should have been all the more careful to examine the attempts that had been made to violate law at Nassau. That the examination he did make of the testimony and the opinion given thereon was a farce, constituting negligence if not crime, will be evident if the opinion is again read, (*ante*, p. 57 to 60.) The opinion reads as if it were part of the argument presented by Mr. Burnside, Her Majesty's Solicitor General who was counsel for the Florida, and who afterwards in 1865, elected to resign his office rather than to give up the brief which he had prepared to defend the Mary, (Alexandra) (*ante*, p. 156.)

The evidence was clear that the Oreto was fitted as a vessel of war; that she had guns on board of her; that she was not fitted for the carrying of cargo; that an attempt had been made to put shells on board of her; that a large quantity of gun-tackle blocks so entered in the ship's log-book had been put on board and stropped; that she could be armed in twenty-four hours; that she had on board a Confederate flag; that Low, an agent for the Southern States, had exercised control over her, and yet she was released, and no appeal was taken from the decision, though Her Majesty's officers at Nassau could not but have known that she was intended for exactly what she afterwards proved to be, and that perhaps half a dozen blockade runners were ready at Nassau with a cargo that would supply to her the needed armament, as did the Prince Alfred a few days later.

Her Majesty's Commissioners in 1867 recommended that a vessel should be detained on a reasonable and probable cause until her owner should establish to the satisfaction of the court that his ship was lawfully fitted out; equipped, armed or dispatched. This recommendation was necessary to fulfill all the obligations of neutrality. What, then, shall be said of the release of the Florida? Even admitting that there had been no actual proof against her, was there a single circumstance in connection with her situation at that time which did not show the purpose for which she was built?

Here at Nassau, within a day's sail of a Confederate port, there could be no pretence as had been made by the collector, Edwards, at Liverpool, that she was intended for the Italian Government. If the escape of the Florida from Liverpool was a scandal and a reproach, what shall we say of her release at Nassau by the court and law officers.

The subsequent history of the Florida justified every suspicion which Mr. Adams and which Mr. Dudley had had, and proved the utter fallacy of every reason Judge Lees had given for her release.

Read the story of her arming as given by the three sailors who helped to place her guns—(*ante* p. 66.)

Within a few weeks after the Oreto was released she sailed from Nassau, and after she had been out about three hours overtook the British Schooner, Prince Alfred, also from Nassau, made fast to her and towed her to Green Key one of the Bahama Islands; there the two vessels remained six days; during which time the Florida was armed from the Prince Alfred with six 32 pounders, broadside guns, and two 68 pounder pivot guns, and with a full supply of shot and shell in cases, and amunition in kegs, the Florida then hoisted the Confederate flag, her crew manned the rigging, gave three cheers and she was off.

The Florida was now ready for her cruise but she had not sufficient crew, for the sailors at Nassau were not blinded as was Judge Lees, and understanding the object for which she was intended refused to ship, so that Captain Maffit wanted more men and having gone to Cardenas, in Cuba, and afterwards to Havana she ran into Mobile. She afterwards, in January, escaped from Mobile and arrived at Nassau again on 30th January, 1863.

Captain Maffit went immediately to visit the Governor; he was received very cordially and dined with His Excellency. The next morning the Florida's decks were alive with a gang of laborers from the town, who immediately set to work in making sundry alterations in her interior arrangements, while the lighters from shore brought on board provisions of all kinds, chain cable and rigging. The officers in the mean time were on shore and succeeded in picking up ten or fifteen recruits, all seamen.

This is the account United States Consul Whiting gives of her reception—(*ante*, p. 65.)

> "This pirate ship entered this port with the secession flag at her peak and the secession war pennant at her main, and anchored abreast of Her Britanic Majesty's steamer Barracauta, Maffit and his officers landing in the garrison boat, escorted by the post adjutant Williams of the 2nd W. I. Regiment. * * *
>
> "The privateer soon after anchoring commenced coaling by permission of the authorities, an evidence of the perfect neutrality which exists here where the United States steamer Dacotah, but a few months since was only permitted to take on board twenty tons of coal from an American bark off Hog Island, and only then on Captain McHinstry and myself pledging ourselves in writing that within ten days after leaving the port she should not be cruising within five miles of any island within the Bahama Government."

Such was the reception given to the Florida upon her return to Nassau. No change had taken place in the vessel since she had been released by Judge Lees except that she had been armed, as Captain Hickley had testified, she could be from a schooner she towed behind her from Nassau to Green Key a small island of the Bahama group. There the Confederate flag was raised and there Captain Maffit read his commission.

This vessel certainly had escaped, had been released and had been armed, in violation of England's duty as a neutral. Her reception at Nassau serves to explain, if any explanation were needed, the decision of Judge Lees. The sympathies of the Governor at Nassau, and probably of all the colonial officers as well as those of the inhabitants were with the insurgents.

The Florida received this great hospitality because she carried the Confederate flag and she was released that she might carry it.

She came back to Nassau, not as a criminal who had escaped punishment, but as a victor who waited the crown.

From Nassau she went to Barbadoes and there within thirty days after she had been coaled at Nassau, contrary to Her Majesty's instructions and against the remonstrances of the United States consul she was allowed to take in another full supply of coal.

On the authorities I have already given, the Florida should have been seized at Nassau on her return, certainly she should not have been allowed to enter that port or any other port of Her Majesty, nor should she have been allowed to have taken coal or other supplies at these ports. If she had been seized, her burnings would have ended, if Her Majesty's ports had been closed to her she would never have caught a United States sailing vessel, and Admiral Wilkes in the Vanderbilt would have caught her.

Admiral Wilkes had gone to Barbadoes in search of the Florida, and not finding her there, had had some correspondence with Governor Walker with regard to the circumstances under which the Florida had been allowed to coal, and writing of these circumstances to Mr. Welles, Secretary of the Navy. He said:

> "In this case the sympathy and aid has been carried further and with an audacity which was not to be expected from any official of Her Majesty, excepting Governor Bailey of Nassau, who has so identified himself with the contraband trade that it has almost become a by-word."

Note what he says further:

> "Since I have been in command of this squadron not a single pound of coal has been taken from a British port, nor have any of the vessels been permitted to enter or anchor off their ports."

In June, 1864, the Florida returned again to the West Indian islands, and Consul Allen under date 30th June, writes as follows to Mr. Welles, Secretary of the Navy:

Vol. 1, p. 652.

> "The Florida, after remaining in port nine days, went to sea last Monday evening, but has not been far from land; she is in sight to-day, from the hills, six miles off. She boards all vessels approaching these islands."

This extract from Mr. Allen's letter was sent to Earl Russell by Mr. Adams, who called his attention to the fact that the island of Bermuda was thus made a base for hostile operations against the United States.

On the 5th September Earl Russell replied that the conduct of the Lieutenant-Governor of Bermuda on the occasion in question was perfectly proper.

Mr. Welles, in transmitting to Mr. Seward the extract from Mr. Allen's letter, said:

"Here is a predatorial rover without acknowledged nationality permitted to remain in a British post nine days, and then to coal and receive her supplies in order to go forth and plunder our merchantmen engaged in peaceful commerce.

"*Without this encouragement and assistance in the British islands the Florida would not perpetrate these outrages.*"

Here, then, we have Earl Russell justifying acts which we have shown that it was the duty of Great Britain to have prevented, and the permitting of which her Attorney General said was a mere matter of discretion. Such reception and hospitality, Her Majesty's Commissioners recommended in 1867, should never be given to any vessels which should thereafter be built, fitted out and armed as was the Florida.

Without this encouragement and assistance from the British islands, on the authority of the Secretary of the Navy the outrages committed could not have been perpetrated. Thus, again, we fix upon England the liability for the damages by the Florida. Instead of using all the means in her power to prevent the escape of the Florida from Liverpool and Nassau, and the subsequent destruction by her on the commerce of the United States it would almost seem that, I will not say the Government, but some of its officers used all the means in their power to accomplish the escape of the Florida, and to aid in her captures and her burnings.

THE CASE OF THE ALABAMA.

The Alabama sailed from Liverpool on the morning of the 29th of July, 1862, and ran down to Moelfra Bay, where she remained until the morning of the 1st of August.

This vessel was sister to the Florida. Captain Bullock expected to have commanded her himself, but on the return of Captain Semmes to Liverpool, after the Sumter had been dismantled, Bullock offered the command to him. Semmes, however, chose not to take it and went to Nassau. There he received an order from Mr. Mallory, dated 2d May, 1862, assigning him to the command of the Alabama, which did not make her trial trip from Liverpool till nearly sixty days after this order was written.

On the 15th June he wrote to Mr. Mallory, Secretary of the Confederate Navy, acknowledging the receipt of this order, and saying:

> "In obedience to this order I shall return by the first conveyance to England, when the joint energies of Commander Bullock and myself will be dedicated to the preparation of this ship, the Alabama, for sea. We cannot, of course, think of arming her in a British port; this must be done at some concerted rendezvous to which her battery and most of her crew must be sent in a merchant vessel."

I have quoted this letter here as it shows how perfected and organized were the acts of the Confederate agents in England. The whole letter is found in the "Cruise of the Alabama and Sumter," page 93.

Semmes had remained at Nassau long enough to know that the Florida would not be held there, and in the same letter to Mr. Mallory he writes:

> "At the earnest entreaty of Lieutenant Commanding Maffit, I have consented to permit Lieutenant Stribling to remain with him as his first lieutenant on board the Florida; and the Florida' officers not yet having arrived, Mr. Stribling's place on the Alabama will be filled by Midshipman Armstrong, promoted."

Think for a moment of the condition of the vessels to and from which these officers were transferred,—the one was in a British port stropping her gun-tackle blocks and not yet released by Judge Lees,—the other had just been launched from the shipyard of a member of Her Majesty's House of Commons. If Her Majesty's officers had done their duty, neither Stribling nor Armstrong would have commanded British sailors to set fire to the commerce of the United States, from these two vessels, whose escape was a scandal to British laws.

The story of the Alabama has been already given, (*ante*, pp. 69–100,) but I note again a few dates.

THE DELAY AND NEGLIGENCE BEFORE A DECISION TO DETAIN.

The building of the Alabama had for sometime been an object of suspicion to Mr. Dudley. On the 16th May, 1862, he wrote that there was no doubt but that she was intended for the rebels. On the 13th June he wrote that the gunboat built by the Messrs. Laird will soon be completed. It had not yet been decided to bring the matter to the notice of the English Government.

On the 21st June he wrote to Mr. Adams, giving particulars and the admissions of two officers of the Sumter and of the foreman in Lairds' yard, and said that the evidence was entirely conclusive to his mind and that he did not think there was the least room for doubt about it.

On 23d June Mr. Adams transmitted this last letter to Earl Russell, and after alluding to the recent escape of the Florida, and making various statements to show that the Alabama was intended for the same purpose, he solicited such action as "*would tend either to stop the projected expedition or to establish the fact that its purpose was not inimical to the people of the United States.*"

If the English law had contained the provisions which the United States law contained, or the provisions which Her Majesty's commissioners have since said it ought to contain, Mr. Adams would have felt certain that the Alabama would have been stopped upon the receipt of this letter until the Lairds could have satisfied a court that its purpose was not inimical to the people of the United States. But knowing the defects which existed in the law, and remembering the experience he had had in the case of the Florida, he wrote to Mr. Seward on 26th June that he entertained little hope of a more favorable result now than had attended all his preceding remonstrances, but that the record would hardly seem complete without inserting Mr. Dudley's letter.

Mr. Adams letter to Earl Russell was referred to the commissioners of customs who reported that there was not sufficient ground to warrant the detention of the vessel or of interference on their part, and that the seizing officers might entail on themselves and the Government very serious consequences should they act without the production of full and sufficient evidence.

Earl Russell therefore suggests to Mr. Adams that the consul should submit what evidence he might possess. Accordingly, on the 9th July, Mr. Dudley writes a long letter to Collector Edwards saying that he had evidence in his possession that had satisfied him beyond doubt that she was intended for the Confederate service, and offering to give him any personal explanation or information whenever desired.

On the 10th July, Edwards replies that there was nothing in the letter which could be acted upon unless legally substantiated by evidence.

On the same day he refers Dudley's letter to the Commissioner of Customs with the suggestion hat the Lairds were not likely to commit themselves by any act which would subject them to the penalties of the law even if the vessel was intended for the Confederate service.

He evidently knew the plan of the Lairds and Captain Bulloch to send her off without her guns.

On the 11th July Mr. Dudley wrote Mr. Adams that the United States could not expect anything like impartiality and fairness from a Government which would throw upon a foreign minister the onus of proving and establishing by legal evidence that this vessel is intended for a privateer. He then states his idea of what the British Government ought to do, which coincides exactly with what Her Majesty's Commissioners have since recommended that Her Majesty's Government in all similar cases in the future should do. But Mr. Seward begs Mr. Dudley to go on, employ a solicitor and get up affidavits, and Mr. Squarey was retained.

On the 21st July six affidavits were made and submitted to the collector, Edwards.

Passmore, who made one of the affidavits, swore that he had been enlisted by Captain Butcher as a sailor on board the vessel for the express purpose of going to fight for the Southern Government, and that it was well known by all the hands on board that the vessel was going out to destroy the commerce of the United States, and that she had already taken on board about three hundred tons of coal and a large quantity of provisions, (*ante, p.* 77.)

On the 23d July the collector, Edwards, reported to Mr. Squarey solicitor of Mr. Dudley, that the evidence submitted was not deemed sufficient to justify any steps being taken against the vessel.

On the 22d July affidavits were made by Edward Roberts and John Taylor, each saying that he had enlisted on board the Alabama, and that it was generally understood on board that she was going to fight for the Southern Government, and making various statements that established this fact beyond all doubt.

On the 23d July Mr. Collier, barrister, referring to all the affidavits, gave his written opinion that he thought it the duty of the collector of customs to detain the vessel, and that he would incur a heavy responsibility if he did not do so. He said, further:

> "It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act, which if not enforced on this occasion is little better than a dead letter.

"It well deserves consideration whether if the vessel be allowed to escape whether the Federal Government would not have serious grounds for remonstrance."

This opinion with all the affidavits were transmitted to the secretary of the Board of Customs on the same day, the 23d July, by Mr. Squarcy. He wrote:

"*The gunboat now lies in Birkenhead dock ready for sea, with a crew of fifty men on board. She may sail at any time, and I trust the urgency of the case will excuse the course I have adopted of sending these papers direct to the Board instead of transmitting them through the collector at Liverpool, and the request I now venture to make that the matter may receive immediate attention.*"

On the 26th July, having heard nothing, Mr. Squarey wrote again, and said: "Every day affords opportunities for the vessel in question to take her departure."

Not only did Mr. Dudley and Mr. Squarey use their utmost efforts to secure action on the part of the English Government, but on the 22d July Mr. Adams himself transmits the six affidavits to Earl Russell. These affidavits were submitted to the law officers of the Crown on the same day. On the 24th Mr. Adams submitted the two other affidavits, and the opinion of Mr. Collier, to Earl Russell.

Not till the 29th, seven days after the six affidavits, including the affidavit of Passmore, had been submitted to the law officers was any written opinion given to Earl Russell, and then the opinion was given that the vessel should be seized.

Turn backward and read the letters of Mr. Dudley, (*ante*, p. 72,) and the affidavit of Passmore, (p. 77,) and of Roberts and Taylor, (pp. 80, 81,) and then note that these men in effect swore that they had been enlisted on board the Alabama to destroy the commerce of the United States, and that Taylor swore that she was "now chock full of coals," and on the 23d July that Mr. Squarey had written that she was ready for sea and might sail at any time. How shall we characterize the negligence which allowed seven days to pass away without even giving an order to detain the vessel until a decision should be arrived at?

I have said the opinion of the law officers was given on the 29th. That such an opinion was to be given was known by the Lairds as early as the 28th, certainly before Mr. Squarey or Mr. Adams knew of it.

This is what we read in the cruise of the Alabama and the Sumter:

> "On the application of Mr. Adams an order was dispatched to the customs authorities at Liverpool to seize the ship and prevent her from going to sea. Fortunately for the Confederate vessel her friends were equally on the watch, and tidings of the projected seizure were promptly conveyed to Birkenhead. It was necessary now to act with promptitude, and the final preparations were pushed on with the utmost speed. At length, on the morning of the 29th July, at a quarter past nine o'clock the anchor was got up for the first time since she had been afloat, and the "No. 290" dropped slowly down the Mersey, anchoring that afternoon in Moelfra Bay."

On the 29th of July Mr. Squarey, who was very watchful, evidently knew nothing of the decision that had been arrived at, for on that day he telegraphed to the Commissioners of Customs at London that the vessel "No. 290" came out of dock last night and left port this morning. It is evident from these facts that the determination to seize must have been made as early as the 28th, for on that afternoon, certainly, it was known at Birkenhead.

THE DELAY AND NEGLIGENCE AFTER DECISION TO SEIZE.

After showing this great negligence in delaying all action on the representations of Mr. Adams for a month, and on the sworn affidavits for a week, it seems a small matter to consider the negligence from the 28th July till the 1st August. But I again state a few facts. (See *ante*, pp. 86 to 90.)

As early as the 28th the law officers determined to advise seizure. On that day this determination was known at Birkenhead. On the next day Mr. Squarey telegraphed the Commissioners that the Alabama had left port. That telegram was immediately communicated to the law officers. On the 30th the tug Hercules returned from the Alabama to Liverpool, and took on board men who admitted to Surveyor Morgan that they were going to "join the gunboat." But no step was taken to follow or seize the "290," and the Hercules carried British sailors to her at Moelfra Bay.

Here then was abundant opportunity to have seized the Alabama after it had been determined by the law officers to seize her; after the Government officers had additional evidence that she was intended for a gun boat, and after that it was known that the tug boat, Hercules, had just returned from Moelfra Bay where she had left the Alabama and where she was now going to carry supplies.

Here then was a decision to seize, additional evidence that the seizure should be made, an authority to make the seizure, and yet no seizure was made.

SOME OFFICER OF HER MAJESTY WAS NOT ONLY NEGLIGENT BUT CRIMINAL.

Earl Russell knowing all the facts admitted that the escape of the Florida and Alabama were a scandal and reproach to English laws. He knew much more of the facts than we know, but who that reads what is here written will not agree with him.

The final determination to seize showed that the seizure should have been made earlier. It was impossible to present stronger evidence than that presented ; there not only was a reasonable and probable cause for believing, but there was no reasonable or probable cause for disbelieving, that the vessel was intended for the insurgents.

Read what the Solicitor General said in the House of Commons in justification of the seizure of Lairds' rams, these were his words, (*ante*, p. 98.)

> " It was not necessary in order to justify the seizure that the evidence should be sufficient to satisfy a jury, it was enough that the Government had a *prima facie case* such as would induce a magistrate to remand a prisoner."

Read also what Sir Roundell Palmer, then Attorney General, said in the same debate :

> " The Government have acted under a serious sense of their duty to themselves, to Her Majesty, to our allies in the United States, and to every other nation with whom Her Majesty is in friendship and alliance and with whom questions of this kind hereafter may be liable to arise. *It was the duty of the Government to use all possible means to ascertain the truth and to prevent the escape of vessels of this kind to be used against a friendly power. It was their duty to make inquiries and act if there was good ground for seizure.*"

Note also that in this same debate, Sir Hugh Cairns said that either the English "Government must contend that what they did in September as to Lairds' rams, was unconstitutional, or that they ought to have done the same thing with regard to the Alabama, and are liable."

Note also that the House of Commons sustained the action of the Government in detaining the rams on suspicion and that both Sir Roundell Palmer and Sir Hugh Cairns in 1867, united with others in the recommendation that thereafter all ships should be detained when there should be a reasonable and probable cause for believing that they were to become future Alabamas, and that they should not be released till the owner thereof should establish to the satisfaction of the court that the ship was not being built, equipped, fitted out, or armed, or intended to be dispatched contrary to the neutrality law, which was recognized as expressing an international obligation.

What better authority is possible to establish England's negligence and liability?

The law officers who hesitated to seize the Alabama, justified the seizure of Laird's rams under similar circumstances, the distinguished counsel, Sir Hugh Cairns, who condemned the action of Sir Roundell Palmer, the Attorney General, in deciding to seize Lairds' rams, said that if that act was justifiable England was liable for the losses by the Alabama, and then these two most distinguished advocates united in recommending an amendment to the neutrality law which if it had formed part of the law in 1862, would have authorized the detention of the Alabama five weeks before she actually sailed.

SUBSEQUENT NEGLECT TO SEIZE THE ALABAMA OR TO EXCLUDE HER FROM BRITISH PORTS.

After the Alabam escaped orders were sent to Nassau to seize her if she should go there.

We have seen (*ante* p. 98, 99, 223, 224,) that she did not go to Nassau, but that she afterwards visited Jamaica and Cape of Good Hope, and at Jamaica was received with all courtesy and kindness, provisioned, coaled, and made the necessary repairs after her "recent conflict" with the United States gunboat Hatteras. That at Cape of Good Hope, the crew of the English mail steamer cheered, and the enthusiasm displayed by the inhabitants amounted almost to a frenzy. The Alabama coaled also at Simon's Bay.

Some merchants from Cape Town stored a quantity of coal for the Alabama at Angra Pequena, a bay on the West Coast of Africa, just north of Cape of Good Hope.

The Vanderbilt seized this coal and appropriated it to its own use.

After her escape no restrictions of any kind were put upon the Alabama in British ports which were not put upon the war vessels of the United States. Great Britain could have seized the Alabama at Jamaica; following the precedent made by the United States in 1793, she should have excluded her from her ports and thus prevented her from obtaining those supp'ies which, in themselves to a great extent, contributed to the destruction of the commerce of the United States.

The Alabama destroyed the property of citizens of the United States valued at over five million dollars.

Practically the English Government did nothing whatever to prevent the escape of this vessel from Liverpool and after she had escaped and been armed, it not only did nothing to prevent the destruction contemplated by that vessel, but it contributed largely to that very destruction.

It should have used all the means in its power to prevent her escape and to prevent this destruction, and having failed is liable for the damages caused by that vessel.

After the Florida and Alabama had escaped and been hospitably received in British ports the English Government had in effect, said to the Confederate agents, we will not instruct our officers to watch your movements, we will not listen to the representations of the United States officers that you are fitting out vessels to be used in the destruction of their commerce, nor will we act promptly upon those representations even if established by legal evidence, and if you succeed in getting an armed vessel at sea, we will afterwards receive her hospitably into our ports and allow her to coal and refit there, provided that a Confederate flag has been hoisted at her mast head. In 1863, this line of conduct had almost completely discouraged Mr. Dudley and Mr. Adams. (See letters quoted, *ante*, pp. 150–151.)

Under these circumstances Bullock and the Confederate agents went hopefully to work to fit out other vessels.

LIABILITY FOR ESCAPE OF GEORGIA AND SHENANDOAH.

How the *Georgia* was fitted out is shown at length, (*ante*, pp. 101–104.)

Mr. Dudley believed that she was intended for the Confederates and knew that she had shipped twice the number of men that would be required for any legitimate voyage at Liverpool several days before she sailed, but so discouraged had he become by his fruitless efforts to stop the Florida and Alabama, that instead of furnishing evidence to Earl Russell he communicates it to Mr. Seward.

So the Georgia escaped before any communication had been made to the English Government by United States officers as to her supposed illegal voyage. That such information was not given resulted from the negligence which the Government had shown in regard to the Florida and Alabama. Thus the negligence in those cases furnishes a ground to establish England's liability for the destruction by the Georgia.

Her liability for the destruction by the *Shenaudoah* is fixed in the same way.

On the 7th October (see *ante*, p. 108.) Mr. Dudley had reasonable and probable cause for believing that *the Laurel* was intended for a privateer and that she had taken on board a number of guns and gun carriages. This information he sends to Mr. Adams and to Mr. Seward, instead of sending it to Earl Russell or Collector Edwards as he would have done if they had previously used all the means in their power to detain the Florida and Alabama, or had executed a law which should have authorized them to detain the Laurel till her owners could have shown that she was about to be dispatched for a legitimate voyage.

So also in regard to the *Sea King, (Shenandoah,)* to which vessel the Laurel transferred her armament.

Mr. Dudley had seen that vessel at Glasgow on a former occasion and reported that she was a most likely vessel for a privateer. When she was sold to Richard Wright, of Liverpool, on 20th September, Mr. Moran, Secretary of Legation at London, had information of the same, and suspected the real object of her transfer and fitting out, but from the previous action of the English Government he had no reason to believe that it would act on a reasonable and probable cause, so he communicates with Mr. Dudley instead of with Earl Russell. Thus the gross negligence of the English Government in the cases of the Florida and Alabama which Earl Russell called a scandal and reproach, contributed to the escape of the Georgia and Shenandoah.

But even if Mr. Adams or Mr. Dudley had not had any suspicions in regard to the Georgia and Shenandoah, which they would have communicated to the English Government, provided they had reason to believe that these representations would be acted upon, the English Government is not thereby relieved from the obligation to have used all means in its power to have prevented the escape of those vessels. Its duty and its ability were not limited to an examination of the evidence which should be presented by the American consul in regard to crimes about to be committed by British subjects in British ports. It was its duty to have prevented these crimes by all the means in its power. One means within its power was the detection of contemplated crimes. Its opportunities for detection were infinitely greater than those possessed by Mr. Adams or Mr. Dudley, and the fact that they had discovered a reasonable and probable cause for believing that the Georgia and Shenandoah were to be dispatched, for the purposes for which they were in fact dispatched, shows that the English Government could have made those suspicions much more reasonable and probable if it had used all the means within its power to have discovered those attempted violations of neutrality which it was its duty to discover and prevent.

Thus the Georgia and the Shenandoah escaped—

First, through the negligence of the English Government in allowing the escape of the Florida and Alabama.

Second, through its negligence in not using available means to discover the attempt to commit crimes that even the United States minister and consul discovered.

GEORGIA AND SHENANDOAH IN BRITISH PORTS.

After the Georgia and Shenandoah escaped they each received unrestricted hospitality in British ports, the promise which the English Government in effect made to the Confederate agents was not broken.

When at last *the Georgia* returned to Liverpool she was allowed to be dismantled and sold. During nearly all the time she cruised as a pirate she had been registered as the property of a Liverpool merchant. Now she was allowed to be sold to another British subject, and was registered in his name.

Certainly the English Government could have seized in its ports a vessel with a British register, and equally certain is it that it could have forbidden that vessel to enter its ports or receive supplies therein.

When *the Shenandoah* was about to leave Liverpool so certain was Captain Bullock that the mercantile marine of the United States was nearly destroyed, and so certain was he that the English Government at Melbourne would supply the needed opportunities for refitting should she go there, that he did not hesitate to order Captain Waddell to visit the Arctic ocean and destroy the whaling vessels whose officers and crews, in those seas far away from home, were pursuing their peaceful occupation, fancying that the dangers of that northern sea protected them from capture by any British built cruiser that carried a Confederate flag.

This is what Captain Waddell on 5th November, 1865, writes to Earl Russell of his instructions, (Vol. 2, p. 461 :)

"My orders directed me to visit certain seas in preference to others. In obedience thereto I found myself in May, June and July of this year, (1865,) in the Arctic Ocean."

So the destruction of the whaling fleet and the reception at Melbourne was planned at Liverpool.

NEGLIGENCE AT MELBOURNE.

I have set out at length, (*ante*, p. 114, 140,) the reception the Shenandoah received at Melbourne, and to the story there told I now refer.

The Shenandoah had come there to refit. She obtained that permission on the day of her arrival, her propellor shaft was entirely gone and so were her bracings under water. In this condition it was impossible for her to have visited the Arctic Ocean. She was allowed to repair on the Government slip, the Colonial Governor was asked to hurry up the work; the English Government Engineer was on board three or four times a day and " certainly assisted with his opinion and advice if he did not superintend the repairs." Messrs. Langlands made "a good job of their repairs," and the concourse of people cheered, and ships in every direction saluted as the Shenandoah left the slip. These repairs gave the Shenandoah "considerable speed." They had all been made against the most earnest protest of the United States Consul, Mr. Blanchard, who furnished the most conclusive evidence that the Shenandoah *was armed when she left Liverpool*, and that she had been equipped and dispatched in violation of English law, and English duty. But the Colonial Government decided that " whatever might be the previous history " of the Shenandoah, the Government was bound to treat her as a ship of war belonging to a belligerent power.

Notice how Mr. McCulloch, the Chief Secretary justified this action in the Legislative Assembly, (*ante*, *p.* 122,) he said :

> " In dealing with this vessel the Government had not only to consider the terms of the proclamation, but *also the confidential instructions from the Home Government*, and moreover they had brought before them the case of a vessel in exactly the same position as the Shenandoah."

Here then we find the same unprecedented and precipitate proclamation protecting the Shenandoah as it first protected the Sumter and afterwards the Florida and Alabama.

The Confederate agents had reasoned rightly, and the case of the Alabama, " a vessel in exactly the same position," determined the action of the Government at Melbourne.

But what were "the confidential instructions from the Home Government?"

It cannot be that the Home Government had sent any instructions, especially directing the friendly reception of the Confederate cruisers armed from British ports.

It certainly cannot be that the Colonial Government had received any particular confidential instructions to give a friendly reception to the Shenandoah; but what were these instructions?

The fact that there were any "confidential instructions," serves to remind us that those instructions should have either ordered the seizure of the Shenandoah or her exclusion from the colonial port.

So confident was Bullock that the Shenandoah would be welcomed at Melbourne, that he had dispatched the ship John Frazer, from Liverpool, with coal expressly for her and though the Shenandoah, had already four hundred tons on board, she was allowed to receive the cargo of the John Frazer and then had an ample supply for "her contemplated cruise" to the Arctic and her voyage home to Liverpool without again entering port. I need not say that she received this supply of coal against the protests of the United States Consul.

But not only did Waddell repair his ship and take in the coal which had been sent expressly to him, but he was permitted in open violation of English neutrality laws to add forty British subjects to his crew. To learn how this was done and why it was not prevented read the account already given at page 128.

Again and again the United States Consul protested and presented evidence that sailors were being enlisted on board the Shenandoah. Finally, the repairs on the Shenandoah were stopped, Waddell was proven to have sought to violate the law, but he threatened to make a report to the "Richmond government" and the repairs went on. Again the United States Consul offered evidence that Robert Dunning, Thomas Evans, William Green, and many more besides were about to join the Shenandoah, which vessel was then all ready for sea, but the Crown solicitor wanted his "dinner." No other Colonial officer was ready to act, and these three English subjects and more than forty other English sailors joined the Shenandoah that night and went to sea the next morning, and "good men and true they proved, and very useful before the cruise was ended."

Here then was gross negligence and a greater scandal and reproach to the English neutrality law than was the escape of the Alabama from Liverpool.

Thus we establish England's liability for all the damage done by the Georgia and Shenandoah.

These damages were the direct result of the precipitate and unprecedented proclamation; of the reception of the Sumter at Trinadad; of the great negligence in allowing the escape of the Florida from Liverpool; of the greater negligence in allowing her escape from Nassau; of the great negligence which permitted the Alabama to escape from Liverpool; of the neglect to seize the Florida when she first showed the Confederate flag at Nassau; of the neglect to seize the Alabama when she failed to go to Nassau, and went to Jamaica; of the neglect to follow duty and precedent by closing all British ports to the Florida and Alabama, and of that neglect which as late as 1864, allowed the Shenandoah to enter Melbourne, and there refit and obtain supplies not necessary but "ample" for the "contemplated cruise" to the North Pacific, and finally the damages caused by the Shenandoah were the direct result of the inaction of the Colonial officers, who preferred to dine and rest, rather than faithfully to execute the law which had been enacted to enable Her Majesty to fulfil her international obligations.

THE TENDERS OF THE ALABAMA AND FLORIDA.

The Alabama as we have already seen captured the United States merchant ship Conrad near the Cape of Good Hope, and commissioned her on the high seas under the name of *the Tuscaloosa.*

This vessel afterwards went into Cape Town where the United States consul demanded that she should be seized, but the Attorney General instructed the Colonial Government that the Confederate flag and commission protected her.

The Duke of Newcastle afterwards by the advice of Her Majesty's law officers instructed the Governor that she should be seized and held, and having come into Cape Town again, she was seized but released on the ground that, not having been seized on her first entrance, she had a right to expect that her flag and commission would protect her a second time.

The Tuscaloosa captured two vessels belonging to citizens of the United States.

The Florida captured the merchant ship *Clarence* upon the ocean, commissioned her and gave her an armament, force, and equipment of a 12-pound howitzer, twenty men and two officers. *The Clarence* captured seven vessels belonging to citizens of the United States.

Afterwards the Florida captured the *Tacony*, and transferred the same authority, armament, and equipment to her on the high seas.

The *Tacony* afterwards captured, bonded, or destroyed fourteen merchant vessels of the United States off the Atlantic coast.

In the same way the *Lapwing* was fitted up as a tender of the Florida, she captured one vessel the Kate Dye.

The damages caused by the *Tuscaloosa, Clarence, Tacony and Lapwing* are but another part of the damages caused by the Alabama and Florida, and are as directly damages caused by those vessels as if they had been their long boats and had been hoisted to the davits after each capture made by them.

Once establish or admit the liability of Great Britain for the damage done by the Florida and Alabama and you fix the liability for the twenty-four vessels captured and destroyed by their tenders, the *Tuscaloosa, Clarence, Tacony and Lapwing.*

THE CASE OF THE TALLAHASSEE.

The Tallahassee appeared off the coast of New York in July, 1864.

On the 15th August, Mr. Adams wrote Mr. Seward that she was an English built vessel and was supposed to have been armed at Bermuda. (Vol. 3, pp. 315–316.)

On the 20th August, he wrote again that the Tallahassee was said to have been built and to have come out in the character of a merchant vessel, but to have been furnished with her armament in Liverpool; that she appeared on our coast as a pirate; that she was received at Halifax; that her master was reported as saying that she was only one of several very fast steamers which had been built at Liverpool, with armaments prepared in the same way, and that Bermuda and Halifax were to be bases of operations.

I am unable now to state definitely where or how the Tallahassee received her armament. She was built in one of the ports of Great Britain, there fitted as a man of war, and received her armament in or from a British port, either upon the ocean or at Wilmington. She captured thirty United States merchantmen.

In January, 1865, the *Tallahassee* having dismounted her guns and taken the name of the Chameleon, went to Nassau; there the United States Consul asked Governor Rawson to cause an investigation to be had as to her character and purpose. (See vol. 1, p. 117.)

But no such investigation appears to have been made.

On the 9th April, the Tallahassee arrived at Liverpool, and afterwards went into the Birkenhead docks, the same that had held the Sumter. The three guns that she had mounted on her deck while cruising, two swivel and one large pivot, were stowed below in the hold, as Mr. Dudley reported, but Earl Russell wrote Mr. Adams that she had landed her armament at Wilmington, and was now simply a blockade runner. Under these circumstances the Chameleon was allowed to deliver and discharge her cargo at Liverpool.

England's liability for the destruction by this vessel, the Tallahassee, is founded—

First. On the fact that the Queen's proclamation of neutrality in the beginning gave encouragement to the fitting out of such vessels, and afterwards gave them rights and protection which they were never justly entitled to.

Second. On the fact that this vessel was contracted for and built, because of the escape of the Florida and Alabama, and of their subsequent reception in English ports, which escape and recapture showed to the Confederate agents that if the Tallahassee could be built and escape from a British port, she would afterwards be welcomed and protected in any other British port, without any regard to the circumstances under which she had been armed or commissioned.

Third. On the imperfect execution of the law through which she escaped, and of the neglect to forbid her reception at Halifax, Nassau, and Liverpool, and thereby prevent the destruction caused by her.

THE CASE OF THE SUMTER AND NASHVILLE.

The story of the *Sumter* has already been told (*ante*, p. 258.) She captured eighteen vessels belonging to citizens of the United States. (Vol. 2, pp. 483 to 538.)

For the Story of the Nashville see vol. 2, pp. 538 to 592.

The Nashville ran out of Charleston, through the blockade, in November, 1861. She had two small iron guns forward. She stopped at Bermuda, and there the United States consul did everything in his power to prevent her from obtaining a supply of coal, but to no purpose; and she took in about five hundred tons. She arrived at Southampton on the 21st November, having on board the master and crew of the United States merchantman Harvey Birch, which vessel she had seized and burned. At Southampton her captain showed a Confederate commission, and she was allowed to go into the dock and repair. She remained at Southampton about three months, being watched by the United States steamer Tuscarora. She finally escaped, and arrived at Bermuda on the 20th February, 1862. There she took in a supply of coal and left the islands under the escort of Her Majesty's steamer Spiteful. She afterwards went to Charleston, and was not heard of again as a cruiser.

The liability of England for the destruction by the *Sumter* and *Nashville* is founded principally on the fact that the only rights that those vessels had on the ocean was given them by the Queen's proclamation of neutrality, which, as the United States claim, was precipitate and unprecedented.

This proclamation encouraged the insurgents to fit out and commission these vessels, and under this proclamation they were allowed to enter coal and repair in British ports. But for this proclamation they would have had no rights except those of pirates.

There were several other Confederate cruisers, particularly the Jeff Davis, the Chickamauga, and the Olustee, which helped to destroy the commerce of the United States, but of the building and equipment of these vessels, I am unable to speak with certainty.

Thus the examination of the case of each ship establishes the liability for the damages by each ship.

The same precipitate and unprecedented proclamation encouraged and protected each; the same negligence contributed to the capture and destruction by each vessel; each cruiser escaped through that negligence which had not provided proper legislation to enforce the obligations of a strict and impartial neutrality; which did amend the existing law when shown to be inefficient; which did not vigorously execute the law it had provided; which received into its ports as legitimate vessels of war the cruisers whose only right to protection and favor, even if they had been lawfully equipped, was given them by the Queen's proclamation which should have given them no protection, for they had been built and equipped in violation of the strict and impartial neutrality which that proclamation had announced.

It remains to show what is the amount of those claims.

THE AMOUNT OF DAMAGES.

The actual destruction of property by the Florida, Alabama, Georgia, Shenandoah and other vessels, forms but a small part of the damage, which these vessels caused.

This damage is well set forth in a speech made by Mr. Cobden in the House of Commons, on 13th May, 1864.

The debate began on a question by Mr. Baring as to the circumstances under which the Georgia had been allowed to return to Liverpool. The Attorney General had defended the action of Her Majesty's Government during the war and had given some reasons why the Government had not excluded the Florida, Alabama, and other vessels from its ports and in reply to a suggestion by Mr. Baring, that the law should be amended, he said that he thought the proceedings that had been taken with regard to the Alexandra, Lairds' rams, and the Pampero, would show that the law was really effective and did not need to be amended. To him Mr. Cobden replied in part, as follows:

Vol. 5, p. 589, 13 May, 1864, Hansard, v. 173, pp 467–514.

"With respect to altering our laws, the Attorney General has entered into a long argument to show that the law as it stands is effective for the purpose of preventing a breach of our neutrality, but I cannot imagine a more cruel joke than the honorable and learned gentleman's speech must appear when it comes to be read at Washington. What is the fact? You have been carrying on hostilities from these shores against the people of the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about $15,000,000, or nearly £3,000,000 sterling. But that is a small part of the injury which has been inflicted on the American marine. We have rendered the rest of her vast mercantile property, for the present, valueless, under the system of free trade, by which the commerce of the world is now so largely carried on. If you raise the rate of insurance on the flag of any maritime power, you throw the trade into the hands of its competitors, because it is no longer profitable for merchants or manufacturers to employ ships to carry freight when those vessels became liable to war risks. I have here one or two facts which I should like to lay before the honorable and learned gentleman in order to show the way in which this has been operating. When he has heard them, he will see what a cruel satire it is to say that our laws have been found sufficient to enforce our neutrality. I hold in my hand an account of the foreign trade of New York for the quarter ending June 30th, 1860, and also for the quarter ending June 30th, 1863, which is the last date up to which a comparison is made. I find that the total amount of the foreign trade of New York for the first mentioned period was $92,000,000 of which $62,000,000 were carried in American bottoms and $30,000,000 in foreign.

"This state of things rapidly changed as the war continued, for it appears that for the quarter ending June 30, 1863, the total amount of the foreign trade of New York was $88,000,000, of which amount $23,000,000 were carried in American vessels, and $65,000,000 in foreign; the change brought about being that while in 1860 two thirds of the commerce of New York was carried on in American bottoms, in 1863 three fourths was carried on in foreign bottoms. You see, therefore, what a complete revolution must have taken place in the value of American shipping, and what has been the consequence? That a very large transfer has been made of American shipping to English owners, because the proprietors no longer found it profitable to carry on their business. A document has been laid on the table which gives us some important information on this subject. I refer to an account of the number and tonnage of the United States vessels which have been registered in the United Kingdom and the ports of British North America between the years 1858 and 1863, both inclusive. It shows that the transfer of United States shipping to English capitalists in each of the years comprised in that period, was as follows: In 1858, thirty-three vessels, 12,684 tons; 1859, forty-nine vessels, 21,308 tons; 1860, forty-one vessels, 13,638 tons; 1861, one hundred and twenty-six vessels, 71,673 tons; 1862, one hundred and thirty-five vessels, 64,578 tons; and 1863, three hundred and forty-eight vessels, 252,579 tons. I am told that this operation is now going on as fast as ever. Now, I hold this to be the most serious aspect of the question of our relations with America."

This statement made by Mr. Cobden as to vessels transferred to the British flag will be found to be accurate on reference to the United States officials report. (See Vol. 1, p. 293.)

Mr. Cobden's speech only brings the figures down to 1863. The statement appears more clearly when put in the tabular form of the official report:

Statement in tabular form of American vessels sold to British subjects from 1858 *to* 1864, *inclusive.*

United States official report.

Before the war.			During the war.		
Year.	No. vessels.	Tonnage.	Year.	No. vessels.	Tonnage.
1858	33	12 684	1861	126	71,673
1859	49	21,308	1862	135	64,578
1860	41	13,683	1863	348	252.379
			1864	106	92,052
Three years	123	47,675	Four years	715	480,682

The vessels actually destroyed were about two hundred and fifty. Seven hundred and fifteen were transferred to the British flag. Thus the nation lost its commercial marine.

Nor was this transfer made without great loss to the individual owners.

After the Alabama showed the Confederate flag upon the ocean, the rates of insurance on all United States ships at once rose, and the owners were not only compelled to take freights at low rates, but were also compelled to pay heavy rates of insurance both on the cargo and on the ship; soon therefore, no American ship could be safely sailed at a profit. Under these circumstances the American ship owners offered their ships for sale to the merchants of Great Britain. The sellers were abundant, and the need was great, therefore the price obtained was low. In this way the American merchants sold their ships at a loss, and realized not more than seventy-five per cent. of their true value.

But some American merchants retained the ownership of their ships, and put them under the British flag for protection.

To-day a ship owned by citizens of the United States under a British register is not worth more than seventy-five per cent. of what the same ship would be worth had she an American register. So, then, by the transfer of these vessels to the British flag, whether the transfer was real or pretended, the American owner was damaged to the extent of one quarter of his interest. That is assuming that seven hundred ships were transferred of a gross tonnage of 500,000 tons, the actual damage by this transfer amounts to the same, (I speak in round numbers,) as if one hundred and seventy-five ships of an average tonnage of seven hundred tons each had been actually destroyed.

Note also, the increased expense to merchants who kept their vessels under the American flag, either on account of the high rates of insurance if they were employed, or on account of the loss of the use of them if they remained unemployed.

The escape of and burnings by the Florida, Alabama, and other vessels greatly increased the hopes and expectations of the insurgents, and on that account the contest was very much prolonged.

That contest cost the United States $4,000,000,000.

Let any one think of that amount and make his own estimate of how much less the United States would have been obliged to expend if the Queen's proclamation of neutrality had never been issued, and if the Florida and Alabama had never escaped from Liverpool.

In this connection remember that a large number of United States war vessels were for four years employed in seeking to prevent the escape of some Florida or Alabama from a British port, or in vainly searching for her over the ocean, and remember that these same United States vessels could have been used more effectually to close the Southern ports, if they had not been needed for this other purpose.

These damages to the nation can only be approximated at, but their existence is certain and the amount is monstrous. These are the words of Cobden:

> *You have been carrying on hostilities from these shores against the people of the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars.*

DAMAGES CLAIMED BY CITIZENS OF THE UNITED STATES.

The Alabama	captured	70	vessels.
The Florida	"	36	"
The Georgia	"	9	"
The Shenandoah	"	36	"
Their Tenders	"	34	"
The Sumter	"	18	"
The Tallahassee	"	29	"
The Nashville	"	2	"

Tables giving the claims filed by the United States citizens for the losses of these vessels and their cargoes by the four vessels first named; amount as follows:

Alabama	$5,301,264
Florida	2,791,591
Georgia	332,351
Shenandoah	4,405,178
	$12,830,384

The claims for losses by the other vessels, and other claims that have not yet been filed, will probably bring the gross amount claimed for the property destroyed to at least $13,000,000, even after making a large deduction for some claims which may be over estimated. This is the estimated value of the property at the time of its destruction.

When hereafter, it shall have been determined or admitted that Great Britain ought to pay for the destruction by the Alabama and other cruisers of the ships and cargoes belonging to citizens of the United States, it will be first necessary to determine what was the value of that property destroyed, and then it will be necessary to determine what damage the owner has experienced in being deprived of the use and fruits of his property, from the time it was destroyed till the date of the award.

If a man destroys my property in 1861, and in 1871 returns it to me uninjured or pays me its value, he has nevertheless meanwhile deprived me of the use and fruits of that property and has damaged me thereby. As it might be difficult in most cases to ascertain what this part of the actual damage would be on account of the varying circumstances under which property is used and enjoyed, the rule is fixed in international as in common law, first to estimate the money value of the property at the time of its destruction as one part of the damage, and second to estimate the other part of the damage as if the property destroyed had been so much money destroyed, the loss of the use and fruits of which can be justly and equitably estimated as equal to the loss of the legal interest on that sum from the date of its destruction to the day of the contemplated payment.

In accordance with this rule the amount of actual damage legally due to-day to citizens of the United States, on account of the destruction of any ship by the Alabama or other cruiser, would be the estimated value in money of that ship, at the time of her destruction, together with interest on that amount at the legal rate from the date of the destruction to this date.

Supposing, then, that the average date of the destruction of the several vessels by the Alabama and other cruisers is fixed at 1st April, 1863, the actual damage due to-day, estimating their value at the time they were destroyed at $13,000,000, would be in gross about $20,000,000.

Part of the property destroyed was insured; but this fact in no way relieves Great Britain of her liability to pay the whole value of the property destroyed. Otherwise, if all the vessels and cargoes had been insured, England would be liable for nothing. The first question to settle is whether England is liable for the destruction by the Alabama and other vessels. The liability being once settled the only remaining question is what damage did those vessels cause to the United States, and what amount of property did they destroy belonging to citizens of the United States. And it would be no more absurd to say that a murderer should not be hung for killing a man whose life was insured, than it would be to say that Great Britain should not pay for a ship or cargo which was insured in whole or in part.

The precedents in all cases of similar kind establish the fact that, the amount of liability is in no way affected by the amount of insurance.

The Alabama captured the Sea Bride off the Cape of Good Hope. It may be that the Sea Bride was insured, and that her cargo was not insured, but if Great Britain is liable for the destruction of the cargo she is also liable for the destruction of the vessel, and must make full indemnity for the destruction of both cargo and vessel.

So in regard to other vessels and cargoes, whether they were insured in whole or in part, or not at all.

The destribution of the amount paid for the destruction of property of citizens of the United States whether insured or not will then be made according to the well established principles of insurance law.

The compensation for the property not insured will be due to the owner of that property. The compensation for property insured will be due to the underwriters who have paid the owners of the property to the extent of the amount which they have so paid.

The rule of the law of marine insurance is well settled, and by this rule every contract of insurance is made.

The contract of marine insurance is, in effect, as follows: For a certain sum of money the underwriter promises to pay to the owner of a ship the value of that ship if she shall be wrecked or captured within a certain time. If that ship is wrecked or captured within that time the owner, on making an abandonment to the underwriter, will be entitled to receive from him the value of that ship.

If afterwards the wrecked vessel shall be recovered, or the captured vessel retaken, or compensation made for her capture, then such recovery, recapture, or compensation is for the benefit of the underwriter.

This rule is well established in cases similar to the ships and cargoes destroyed by the Alabama and even if it were not, it is a question with which Great Britain has no concern.

The only question for Great Britain to consider, supposing that her liability had been established, is, what is the amount of damages that have been caused by her negligences. This is the answer.

The national damages are at least a year of war, hundreds of lives, hundreds of millions of debt, and the destruction of the commerce of the United States.

The private damages amount to about twenty millions of dollars.

ATTEMPTS TO SETTLE THE ALABAMA CLAIMS.

While the struggle with the insurgents was still going on Mr. Adams at various intervals presented to Earl Russell, on behalf of his Government, the claims of citizens of the United States on account of vessels and cargoes which had been destroyed by the Alabama and other cruisers, and as he presented them, he set out the grounds upon which the United States Government maintained that Great Britain was liable for the same.

In acknowledging the receipt of these claims Earl Russell denied all liability on the part of Great Britain.

On the 7th April, 1865, Mr. Adams wrote Earl Russell transmitting a report of the depredations that had been committed by the

Shenandoah, and said that his government could not avoid entailing upon the government of Great Britain the responsibility for these depredations.

Earl Russell replied on 4th May at length, and on May 20th Mr. Adams wrote a letter from which I have quoted, (*ante*, p. 5,) as giving a full statement of the basis of the Alabama claims.

To this letter Earl Russell replied on the 30th August; after defending the course of Her Majesty's Government, he concluded as follows:

> "Her Majesty's Government must therefore decline to make reparation and compensation for the captures made by the Alabama or to refer the question to any foreign State."

He added:

> "Her Majesty's Government, however, are ready to consent to the appointment of a commission to which shall be referred all claims arising during the late civil war which the two powers shall agree to refer to the commissioners."

Mr. Adams was afterwards instructed to ask Earl Russell what claims Her Majesty's Government would agree to refer to the commission.

Earl Russell replied that the English Government would refuse to refer the Alabama claims, and Mr. Adams was then instructed to inform his Lordship that with such exclusions the proposition for the creation of a joint commission was repectfully declined.

Meanwhile the Earl of Clarendon had became the minister for foreign affairs, and to him, on the 21st November, 1865, Mr. Adams wrote, declining the proposition made by Earl Russell for a joint commission, because the English Government had thought fit to exclude the just and reasonable Alabama claims.

On the 18th November, Mr. Adams again set forth the United States position. The Earl of Clarendon in reply thought that "no advantage would result from prolonging the controversy, but maintained that the British Government had steadily and honestly discharged all the duties incumbent on it as a neutral power, and had never deviated from the obligations imposed on it by international law."

On the 30th November, 1866, Lord Stanley had become Her Majesty's Minister for Foreign Affairs, and wrote to Sir Frederick

Bruce, saying in effect, that the Government would not be disinclined to arbitrate the Alabama claims provided that a fitting arbitrator could be found, and that an agreement could be come to, as to the points to which that arbitration should apply. This proposal for arbitration had previously been verbally made to Lord Stanley by Mr. Adams.

The correspondence went on for several months, but the English Government declined to refer the question of liability as dependent on the recognition by it of the belligerent rights of the insurgents.

On 9th March, 1867, Lord Stanley wrote Sir Frederick Bruce (see *ante*, p. 4,) stating that the real matter at issue was whether the course pursued by the British Government, and by those who acted under its authority was such as would involve a *moral responsibility* on the part of the British Government to make good, either in whole or in part, *the losses of American citizens.*

On this question he said Her Majesty's Government was fully prepared to go to arbitration with the further provision, that if the decision of the arbiter was unfavorable to the British view, the examination of the several claims of citizens of the United States should be referred to a mixed commission, with a view to the settlement of the sums to be paid on them.

He therefore proposed a limited reference to arbitration of the so-called Alabama claims, and an adjudication by means of a mixed commission of general claims.

This offer was declined, and Mr. Seward, in his letter informing Mr. Adams of this decision, said:

Seward to Adams, 2 May, 1867, vol. 3, p 674.

> "As the case now stands the injuries by which the United States are aggrieved are not chiefly the actual losses sustained in the several depredations, but the first unfriendly or wrongful proceeding of which they are but consequences. If the President were never so much disposed to drop that wrong out of sight in the prosecution of the claims, the recent proceedings of Congress in both Houses show that an approval of such a waiver could not be obtained either from Congress or from the nation. It is, however, hardly necessary to say that in this case the President does not disagree from, but, on the contrary, entirely agrees with Congress and the nation. * * * *
>
> "It is not given us to foresee what new and untried misfortune may hereafter befall our country. I can say, however, with entire confidence, that *I can conceive of no scourge* which may be in reserve for the American people that will ever produce a conviction

on their part that the proceedings of the British Government in recognizing the Confederacy were not merely unfriendly and ungenerous, but entirely unjust."

Both Lord Stanley and Mr. Adams, as well as Mr. Seward and Sir Frederick Bruce, seem to have been desirous at this time that some satisfactory arrangement should be determined upon, but Mr. Seward finally, on the 13th January, 1868, clearly sets out the whole difference that existed between them, which made a settlement impossible. He says:

Seward to Adams, 13 Jan'y, 1868, v. 3, p. 688.

"Lord Stanley seems to have resolved that the so-called Alabama claims shall be treated so exclusively as a pecuniary commercial claim as to insist on altogether excluding the proceedings of Her Majesty's Government in regard to the war from consideration in the arbitration which he proposed. On the other hand I have been singularly unfortunate in my correspondence if I have not given it to be clearly understood that a violation of neutrality by the Queen's proclamation and kindred proceedings of the British Government is regarded as a national wrong and injury to the United States; and that the lowest form of satisfaction for that national injury that the United States could accept would be found in an indemnity without reservation or compromise by the British Government to those citizens of the United States who had suffered individual injury and damages by the vessels of war unlawfully built, equipped, manned, fitted out, or entertained and protected in the British ports and harbors in consequence of the failure of the British Government to preserve its neutrality."

Note particularly this next extract from the same letter, for taken in connection with the extract just made it shows that Mr. Seward, even then, in 1868, contemplated what is now known as Joint High Commission, and will also show the benefits which he contemplated would result from such a commission.

After speaking of the unsettled fishery and boundary questions, he says:

"It was in view of all these existing sources of controversy that the thought occurred to me that Her Majesty's Government, if desirous to lay a broad foundation for friendly and satisfactory relations, might possibly think it expedient to suggest a *conference* in which all the matters referred to might be considered together, and so a comprehensive settlement might be attempted without exciting the sensibilities which are understood to have caused the Government to insist upon a limited arbitration in the case of the Alabama claims."

Mr. Seward authorized Mr. Adams to present these explanations to Lord Stanley but with the distinct understanding that the United States would not be assumed as proposing to open a new negotiation in regard to the Alabama claims.

Thus again the negotiations failed.

On the 6th March Mr. Shaw-Lefevre called attention in the House of Commons to the failure of these negotiations and a long debate ensued.

Mr. Adams on the 7th March sent a copy of the *Times*, which contained this debate, to Mr. Seward, and said:

Adams to Seward, 7 March 1868, vol 3, p 691.

> "Although not present myself on this occasion, I learned from several quarters that the temper manifested in it was throughout fair and even friendly. I am inclined to believe that on the single question of the claims for damage done by the Alabama, and perhaps one or two other vessels, parliament is almost prepared to pay whatever might be adjudged by a commission raised for the purpose without much demur."

I shall hereafter quote what Lord Stanley and J. Stuart Mill said in the same debate and it will then appear that they each in fact admitted that England was liable for the Alabama claims and ought to pay them.

In July, 1868, Mr. Adams decided to resign the arduous position, where he had for so long a time maintained the honor and good faith of the United States.

Mr. Reverdy Johnson was selected as his successor.

He was instructed by Mr. Seward to "sound Lord Stanley" upon the question of a joint commission for the settlement of all claims in which of course the Alabama claims should be included.

Mr. Johnson at once opened the matter to Lord Stanley who regarded the proposition favorably but desired that the Alabama claims should be referred to the sovereign or president of a friendly State and named particularly the President of the Swiss Republic and the King of Prussia.

Mr. Johnson then telegraphed for permission to refer the question to the King of Prussia.

Mr. Seward replied that objection would be raised to any arbiter, who was named in advance.

Mr. Johnson afterwards saw Lord Stanley, and thought that they would be able to agree to a convention under which the selection of an arbiter should be made by the two Governments with the understanding that the arbiter was not to be restricted to the consideration of any one point upon which the claims rest, but should consider every one involved in them.

On the 10th November, 1868, a convention was signed by Lord Stanley and Mr. Johnson, which in effect, provided that the Alabama claims should be referred to four Commissioners, two to be appointed by each Government, and in case these Commissioners could not come to an unanimous decision on the same, the two Governments were to fix upon some sovereign, or head of a friendly State as an arbiter. This same convention provided for the settlement of all other claims by the decision of a majority of the Commissioners, or by a decision of an arbitrator or umpire, whom they should agree on, or who should be determined by lot. All the official correspondence that had taken place between the two Governments on any claim or class of claims was to be laid before the commission or arbitrator.

On receipt of a copy of this convention it was not acceptable to Mr. Seward and the President, principally, because it discriminated between the settling and determining of the Alabama claims, and between the settling and determining of other claims, and various amendments were suggested, which, in effect, provided for the settlement of all claims by four Commissioners, who on their failure to arrive at a decision, should refer the same to some arbitrator or umpire to be selected by the Commissioners, or on the happening of certain events, by the Governments themselves.

Meanwhile the Earl of Clarendon had succeeded Lord Stanley as Minister for Foreign affairs.

THE JOHNSON-CLARENDON CONVENTION AND ITS REJECTION.

Negotiations went on and finally resulted in a convention which was signed in London, on 14th January, 1869, by Lord Clarendon and Mr. Johnson.

In the negotiations which led to this convention, Mr. Johnson reported that "both Lord Stanley and Lord Clarendon yielded a very ready and *cheerful assent to the proposition to submit all the questions involved in the Alabama claims*, not even having expressed a desire during the negotiations to exclude any one of them," and that in this he was "satisfied (as they must be) that they but conformed to *the public sentiment of the nation and to their own wishes*."

Here, then, we see that the English Government consented that the circumstances under which it had given belligerent rights to the insurgents, and continued them in the enjoyment of those rights should be considered in the determination of the Alabama claims.

Copy of Convention, vol. 3, p 752.

This Johnson-Clarendon convention in effect provided that all claims on the *part of citizens* of either Government against the other Government, which had been presented since the 26th July, 1853, or should be presented within a time specified, should be referred to four commissioners, two to be appointed by each Government.

That the commissioners, before examining any claim, should try to agree upon some arbiter or umpire, to whose final decision should be referred any claims upon which they were not able to come to a decision. And, in case the commissioners could not agree on an arbiter or umpire, the commissioners on each side were authorized to name a person as arbitrator or umpire, and thereafter any claim upon which the commissioners were unable to arrive at a decision should be referred to the arbitrator or umpire, who should be determined by lot in each particular case.

The convention also provided that if any two of the commissioners thought it desirable that a sovereign or head of a state should be arbitrator or umpire in case of any claim, the commissioners should report to that effect to their respective Governments, who should thereupon, within six months, agree upon some sovereign or head of a friendly state, who should be invited to decide upon such claims, and before whom should be laid the official correspondence which had taken place between the two Governments, and the other written documents or statements which might have been presented to the commissioners in respect to such claims.

This last provision was designed by the English Government as a means of settling the Alabama claims, for both Lord Stanley and the Earl of Clarendon were of the opinion that a decision on the Alabama claims given by some friendly sovereign would be better received by the citizens of each Government and have more authority in influencing the future conduct of nations than would any decision by the Commissioners themselves, or by any private individual, who might be chosen as umpire.

To satisfy Mr. Seward, this method of arbitration was extended to claims of all kinds.

The Earl of Clarendon had desired to provide that the decision of the arbitrator or umpire upon any particular claim referred to him should rule other claims of the same class, but Mr. Seward objected to this as "superfluous and tending to cavil."

The convention also provided that all sums of money that should be awarded by the Commissioners, or by the arbitrator or umpire on account of any claims should be paid in coin or its equivalent by the one Government to the other.

The other parts of this convention are immaterial to our present consideration.

It was now necessary that the convention should be ratified by the Senate.

After having had the same under consideration for three months, during which time its terms had been made public and generally discussed, the Senate, on 13th April, 1869, declined to ratify it by a vote practically unanimous, there being only one vote in favor and fifty-four against the ratification.

In the Executive session of the Senate Mr. Sumner, having been authorized by the Committee on Foreign Relations to report against the ratification of this convention, delivered a speech on the 13th April, 1869, giving the reasons why it "must be rejected."

The injunction of secrecy was afterwards removed from this speech by the order of the Senate. (See vol. 5, p. 719.) It stands then practically as the authorized statement of the Senate.

Mr. Sumner set out the grounds of complaint against England, and passing over the individual losses he showed that the national damage had been great and infinite, and said, in effect, that England was justly responsible for that damage in any chancery which consulted the simple equity of the case.

Considering these national claims as just and equitable he showed that the treaty only provided for the settlement of individual claims, and that even these claims were to be settled, not on any recognized principle, but were to be determined by chances of a lot and to be set against the claims of English citizens who held Confederate bonds, or claimed damages for losses sustained by them in attempting to violate the blockade.

These are his words:

"An inspection of the treaty shows how from beginning to end it is merely for the settlement of individual claims on both sides, putting both batches on an equality, so that the sufferers by the misconduct of England may be counterbalanced by English blockade runners. * * * *

"The treaty not merely makes no provision for the determination of the great question but it seems to provide expressly that it shall never hereafter be presented. * * *

"The national cause is handled as nothing more than a bundle of individual claims, and the result of the proceeding under the proposed treaty is to be a 'full and final settlement' so that hereafter all claims 'shall be considered and treated as finally settled and barred, and thenceforth inadmissable.' Here is no provision for the real question which though thrust out of sight or declared to be finally settled and barred according to the terms of the treaty must return to plague the two countries. Whatever the treaty may say in terms there is no settlement in fact, and until this is made there will be a constant menace of discord. Nor can it be forgotten that there is no admission of the rule of international duty applicable in such case, this too is left unsettled."

Again he said:

"In the interests of peace which every one should have at heart the treaty must be rejected; a treaty which instead of removing an existing grievance leaves it for heartburning and rancour cannot be considered a settlement of pending questions between two nations. It may seem to settle them, but does not. It is nothing but a snare, and such is the character of the treaty now before us. The massive grievance under which our country suffered for years is left untouched; the painful sense of wrong planted in the national heart is allowed to remain. For all this there is not one word of regret or even of recognition; nor is there any semblance of compensation. It cannot be for the interest of either party that such a treaty should be ratified."

This speech of Mr. Sumner was in the words of Mr. Thornton, to the Earl of Clarendon, "vehemently applauded by the whole of the Republican press," and it was finally approved by the people.

Before it was made Mr. George B. Upton, a merchant of Boston, who was largely interested as an individual claimant, for he had lost several ships, and who was well known as a most earnest advocate of the justice of the United States claims against Great Britain, addressed a petition to the Senate, protesting as an American citizen against the confirmation of the treaty and praying that the Government should "demand redress for its citizens apart from all other claims for the insults and injuries inflicted upon them and the country through the wilful negligence or with the open approval of the English Government." (Petition, Vol. 3, p. 759.)

In the Massachusetts Legislature, a resolution was offered that any treaty which had been submitted, or should at any future time be submitted for ratification which did not by "its terms concede the liability of the English Government for acts of her *proteges*, the Alabama and her consorts, will be spurned with contempt by the American people and that a ratification thereof would be dishonorable to our nation and unjust to our citizens."

Mr. Johnson and Mr. Seward had each seen that the treaty would not be accepted, and on the 22d March, 1869, before the treaty had been rejected by the Senate, Mr. Johnson having heard that the Senate Committee had unanimously decided to report against the treaty, called on the Earl of Clarendon and sought to save the treaty by proposing an amendment to the convention, so that it should embrace all claims of one Government upon the other.

This amendment was considered by Her Majesty's advisers, who did not decline to enter into any such an agreement in the future, but said that it would not "be consistent with the honor and dignity of England to amend a treaty already signed in the possibly fallacious hope that it should thereby meet objections, of the real character of which it was wholly ignorant."

But the treaty was not even satisfactory to England.

The London *Times* of 19th February, 1869, acknowledging that there were other defects in the convention, said: "The real defect in the convention consisted as we have before indicated in the want of a definite basis for arbitration. There is no use in disguising this defect since it would have become patent at the very first sitting of the Commission."

Admitting that the question of premature recognition would have come before the Commission, it says:

> "If this argument had been pushed to extremes, it would obviously have shaken the whole ground of arbitration."

Here then from an English standpoint, we see that if the individual Alabama claims had ever come before an arbitrator and been pressed on the ground of "premature recognition," which ground Mr. Johnson said was included in the terms of the convention "by the use of general terms," and the omission of any specification of the question to be decided, and which was probably intended by the Earl of Clarendon to be so included, yet nevertheless this convention would have proved to be in the words of Mr. Sumner, "nothing but a snare."

Notice what another great authority says:

In August, 1869, Mr. George Bemis of Boston, who had perhaps given more study to the Alabama claims than any American except Mr. Adams, and whose able papers in reply to "Historicus," and in defence of American neutrality are so well known and appreciated as most clearly and ably setting forth and establishing the United States position, wrote from Paris a paper which was entitled 'Mr. Reverdy Johnson; the Alabama Negotiations, and their Just Repudiation by the Senate of the United States.'

This paper was written especially in reply to the avowal of Mr. Johnson that the United States would have obtained by the Johnson-Clarendon convention "all that we have ever asked."

Having most conclusively shown that that convention "was a mush of concessions" or that it was to use the words of Mr. Sumner, a "capitulation," he embodies the chief conclusions to which his argument had tended in six points. I quote two, the fourth and fifth:

> ("4.) The convention of January 14th was rightly rejected, on its merits, by the United States Senate, as an entirely inadequate and insufficient submission to arbitration of the American grounds

of claim in the "Alabama" controversy, either public or private, collective or individual.

("5.) The United States Senate, in rejecting that treaty, rendered a favor to the British Government itself in preventing the further prosecution of a scheme of settlement so defective in its statement of the subject-matter of the dispute, and so totally devoid of any recognition of principle upon which satisfaction might thereafter be awarded or accepted."

Notice also what Mr. Fish wrote to Mr. Motley in a letter which gave him his instructions as successor to Mr. Johnson.

He says:

Fish to Motley, 15 May, 1869, Sen Ex Doc No. 10, 41 Cong., 2 Ses.

"Upon one point the President and Senate and the overwhelming mass of the people are convinced, namely: that the convention, from its character and terms, or from the time of its negotiation, or from the circumstances attending its negotiation, would not have removed the sense of existing grievance; would not have afforded real substantial satisfaction to the people; would not have proved a hearty cordial settlement of pending questions, but would have left a feeling of dissatisfaction inconsistent with the relations which the President desires to have firmly established between two great nations of common origin, common language, common literature, common interests and objects in the advancement of the civilization of the age.

"The President believes the rejection to have been in the interest of peace and in the direction of a more cordial and perfect friendship between the two countries, and in this belief he fully approves the action of the Senate."

From all these authorities then we learn that the Johnson-Clarendon treaty was, we may say, unanimously rejected by the people of the United States.

First. Because it afforded no opportunity for settling what may be called the national claims.

Second Because it did not afford a satisfactory method of settling the individual claims.

Third. Because it did not afford a satisfactory means of defining what the United States believe to be the rights and duties of a strict and impartial neutrality.

For these reasons the treaty was rejected "in the interest of peace."

SUBSEQUENT NEGOTIATION.

After the rejection of the Johnson-Clarendon convention, the President thought that it was not a favorable moment to renew the discussion, and decided to suspend it as wrote Mr. Fish to Mr. Motley on the 15th May, 1869:

"Wholly in the interest and solely with the view to an early and friendly settlement of the question between the two governments."

On the 25th September, 1869, Mr. Fish wrote to Mr. Motley that the President was inclined to believe that the time was now opportune and convenient to place in his hand for "appropriate use a dispassionate exposition of the just causes of complaint of the Government against that of Great Britain." And then, in this same dispatch, Mr. Fish goes on to make such dispassionate exposition.

This dispatch maintains that the Queen's proclamation of neutrality was precipitate and premature; that it should have been deliberate, seasonable and just; that it had "had the effect of creating posterior belligerency instead of merely acknowledging an actual fact, and that belligerency, so far as it was maritime proceeding from the ports of Great Britain and her dependencies alone, with the aid and co-operation of the subjects of Great Britain." * * * * *

Further, that—

"In virtue of the proclamation maritime enterprises, which would otherwise have been piratical, were rendered lawful, and thus Great Britain became and to the end continued to be the arsenal, the navy-yard, and the treasury of the insurgent Confederates."

The dispatch then goes on to state the United States position perhaps more strongly than it has ever been presented. (See *ante*, p. 7.)

It concluded—

"The President is not yet prepared to pronounce on the question of indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain; nor is he now prepared to speak of the reparation which he thinks due by the British Government for the larger account of the vast national injuries it has inflicted on the United States."

This dispatch was read by Mr. Motley to Lord Clarendon on 15th October, 1869.

On the 6th November Lord Clarendon transmitted a copy of it to Mr. Thornton, saying "that Her Majesty's Government regretted that Mr. Fish had not been authorized to indicate some other means of adjusting the questions between the two countries, but that Her Majesty's Government could not make any new propositions until they had more clear information respecting the basis upon which the Government of the United States would be disposed to negotiate."

But Her Majesty's Government fully agreed with Mr. Fish in considering that "it would be desirable to turn the difficulties which have arisen between the two Governments to good account by making the solution of them subservient to the adoption as between themselves in the first instance of such changes in the rules of public law as may prevent the recurrence between nations that may concur in them of similar difficulties hereafter, and that Her Majesty's Government will be ready to co-operate with the Government of the United States for so salutary a result, which would redound to the mutual honor of both countries, and, if accepted by other maritime nations, have an important influence towards maintaining the peace of the world."

Mr. Thornton afterwards called on Mr. Fish on 19th November, and left with him a copy of the dispatch last quoted and at the same time an unsigned paper entitled "notes" consisting of an argumentative commentary on Mr. Fish's dispatch to Mr. Motley of 15th May.

These "notes" and memoranda correctly represented the views of Her Majesty's Government, but were not considered official by Mr. Fish, and therefore they were not answered lest the answer might widen the field of controversy and "make it even more unprofitable and less promising of hope for the disposition of the existing questions."

On the 24th May, 1870, the Earl of Clarendon wrote to Mr. Thornton that "Her Majesty's Government agreed with Mr. Fish that for the settlement and disposition of the questions at issue it is neither useful nor expedient to continue a controversal correspondence in which there is so little hope of either government being able to convince the other; and in which their respective positions and opinions have been so amply recorded and sustained."

A copy of this letter was sent by Mr. Fish to Mr. Motley on 10th June, 1870.

In July last Mr. Motley was removed and since then there has been no Minister of the United States at London.

THE PRESIDENT RECOMMENDS THAT THE GOVENMENT SHALL ACQUIRE THE OWNERSHIP OF THE PRIVATE CLAIMS.

On the 5th of December last the President in his annual message to Congress said:

"I regret to say that no conclusion has been reached for the adjustment of the claims against Great Britain, growing out of the course adopted by that government during the rebellion. The cabinet of London, so far as its views have been expressed, does not appear to be willing to concede that Her Majesty's Government was guilty of any negligence, or did or permitted any act during the war by which the United States has just cause of complaint. Our firm and unalterable convictions are directly the reverse. *I therefore recommend to Congress to authorize the appointment of a commission to take proof of the amounts, and the ownership of these several claims on notice to the representative of Her Majesty at Washington, and that authority be given for the settlement of these claims by the United States, so that the Government shall have the ownership of the private claims, as well as the responsible control of all the demands against Great Britain.* It cannot be necessary to add that, whenever Her Majesty's Government shall entertain a desire for a full and friendly adjustment of these claims, the United States will enter upon their consideration with an earnest desire for a conclusion consistent with the honor and dignity of both nations."

Here then we find that such were the firm and unalterable convictions of the United States in December last that the Government asked power to adjust and authority to settle the individual claims in order that it might have "the ownership of the private claims as well as the responsible control of all the demands against Great Britain."

By this recommendation the Government showed its conviction in the justice of the individual claims and its determination to maintain the national claims.

Soon after the President's recommendation a bill was introduced into Congress to carry the same into effect. It provided for the appointment of a commission to determine the amount of damages caused to citizens of the United States by the Florida, Alabama, Georgia, Shenandoah, and their tenders.

It also authorized the Secretary of the Treasury to issue bonds of the United States to the claimants of an amount equal to the amount awarded them by the Commissioners. This bill was referred to the House Committee on Foreign Relations.

Rumor says that it was about to be reported to the House, when the Secretary of State informed the chairman of the committee that negotiations had been entered into which might make any legislation in accordance with the President's recommendation unnecessary.

JOINT HIGH COMMISSION.

These negotiations resulted in the apppointment of the "Joint High Commission," now sitting at Washington.

In order to show the object and authority of this commission I extract from the official correspondence which was communicated to the Senate on the 9th February, 1871.

On the 26th January, 1871, Sir Edward Thornton wrote to Mr. Fish as follows:

"In compliance with an instruction received from Earl Granville, I have the honor to state that Her Majesty's Government deem it of importance to the good relation which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States towards those possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government. It shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as those which affect the relations of the United States towards Her Majesty's possessions in North America."

Then follows an expression of confidence that good relations would result from an acceptance of the propositions made.

On the 30th January, 1871, Mr. Fish acknowledges the receipt of Sir Edward Thornton's letter, and says:

"I have laid your note before the President, who instructs me to say that he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, and he fully recognizes the friendly spirit which has prompted the proposal. The President is, however, of the opinion that without the adjustment of a class of questions not alluded to in your note, the proposed High Commission would fail to establish the permanent relations, and the sincere, substantial and lasting friendship between the two Governments, which, in common with Her Majesty Government, he desires should prevail. He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generally known as the Alabama Claims, will also be essential to the restoration of cordial and amicable relations between the two Governments. He desired me to say that, should Her Majesty's Government accept this view of this matter, and assent that this subject also may be treated of by the proposed High Commission, and may thus be put in the way of a final and amicable settlement, this Government will with much pleasure appoint High Commissioners on the part of the United States to meet those who may be appointed on behalf of Her Majesty's Government, and will spare no efforts to secure, at the earliest practicable moment, a just and amicable arrangement of all the questions which now unfortunately stand in the way of an entire and abiding friendship between the two nations."

On 1st February, 1871, Sir Edward Thornton replies to Mr. Fish's note of the 30th ult., and says:

"I have the honor to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States the friendliness of which I beg you to believe I fully appreciate."

"I am now authorized by his lordship to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the 'Alabama claims' were submitted to the consideration of the same High Commission, by which Her Majesty's Government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission."

Sir Edward Thornton then expresses the hope that the President would assent to the addition which he thus proposes to the duties of the High Commission, and which he says cannot fail to make it more certain that its labors will lead "to the removal of all differences between the two countries."

On the 3d February, 1871, Mr. Fish replied:

"I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's Government has accepted the views of this Government as to the disposition to be made of the so-called 'Alabama claims.' He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects or of American citizens growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission; but he suggests that the High Commissioners shall consider only such claims of this description as may be presented by the Governments of the respective claimants at an early day, to be agreed upon by the Commsssioners."

This ends the correspondence communicated to Congress.

OBJECT AND AUTHORITY OF THE JOINT COMMISSION.

Sir Edward Thornton's object was "a complete and friendly understanding with reference to the Fisheries question." The Joint High Commission was proposed because the consideration of that question would involve "investigations of a somewhat complicated nature" which it was very desirable "should be thoroughly examined."

The duty of the Commission was thus expressed. "It shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions, &c., &c."

The President thought "that the removal of the differences which arose during the rebellion in the United States, and which had existed since then, growing out of the acts committed by the several vessels, which have given rise to the claims generally known as the Alabama claims, would also be essential," and desired that this subject might "be treated of by the proposed High Commission," and might thus "be put in the way of a final and amicable settlement."

Sir Edward Thornton replied that it would give Her Majesty's Government "great satisfaction if the Alabama claims were submitted to the consideration of the High Commission," provided that certain other claims could be similarly referred.

To this last proposition, the President consented with a suggestion that the High Commission would only consider such claims as would be presented at an early day.

Leaving out the other matters that are referred to this Commission, we notice first that the Alabama claims both as national and individual claims, and as arising out of the several vessels, are before the commissioners for their consideration. These claims are to be "treated of" by them; they are to discuss the "mode of settling" them; they are to remove the "differences" which have existed in regard to them; they are to seek to come to a "friendly and complete understanding" in regard to them; and in short the Alabama claims are to be "put in the way of a final and amicable settlement."

Neither the English nor the United States commissioners have absolute authority to bind their own Governments. Their first object is consultation, next agreement among themselves, and lastly recommendation to their respective governments.

I have said that they have not authority to bind their governments. Perhaps such authority may have been given or may hereafter be given the English Commissioners, but no treaty can be made by the United States Commissioners which will be binding on the United States, till it has been ratified by an affirmative vote of two-thirds of the Senate.

Any agreement, therefore, made between the commissioners, must in effect be approved, not only by the President, but by the people of the United States.

THE SETTLEMENT ALREADY OFFERED AND DECLINED.

With this idea of the objects and powers of the High Commission we come to consider what treaty the United States Commissioners can sign which will be acceptable to the people of the United States and accomplish a "final and amicable" settlement of the Alabama Claims.

Note to what the English Government have already consented:

The English Government have consented, first, in the Johnson-Stanley convention of the 10th November, 1868, to a distinct reference of the private Alabama claims to some sovereign or head of a friendly state to be fixed by the high contracting parties.

Again, in the Johnson-Clarendon convention, on the 14th January, 1869, they in effect agreed again that the private Alabama claims should be determined by some sovereign or head of a friendly state, in case two of the four commissioners should think it desirable; and as both Lord Stanley and the Earl of Clarendon had expressed a wish that the question should be decided in that way the two English commissioners would have so desired, and the arbitration would have been made.

As we have seen, the Earl of Clarendon desired that the abitration of one claim should determine all of that class, and that an agreement to that effect should be included in the treaty, but Mr. Seward thought that such a provision would be superfluous, thus admitting the fact that the decision of an arbitrator on one of the private Alabama claims under the terms of the Johnson-Clarendon convention would have bound all the claimants.

In both these conventions the private claims were to be arbitrated and decided with reference to all the grounds of liability which had ever been presented by Mr. Adams or Mr. Seward in their correspondence as printed.

The English Commissioners then come prepared, before discussion, to refer the private Alabama claims to the arbitration of some sovereign or head of a friendly State, the same claims to be finally decided upon by him, after a consideration of all the grounds of liability that have been or may be stated on behalf of the United States.

But such an arbitrator the United States Commissioners cannot accept.

The present position of the United States is this: the Senate has almost unanimously rejected a treaty which provided for the arbitration of the claims for damages to individual citizens of the United States by the Alabama and other cruisers, and this on the ground that even the payment of these private claims by the award of an arbiter would not be a satisfactory settlement of the Alabama claims.

The President, the Senate, the press and the people have all approved.

A simple treaty, therefore, which provided only for the arbitration of the private Alabama claims would not be approved by the Senate, for the same body that decided in effect that it would have been a "capitulation" to have ratified the Johnson-Clarendon convention, would consider it still more a capitulation now to ratify a treaty which only provided for the same or a similar arbitration.

The message of the President shows that such an arbitration would not be satisfactory to the executive, for he could not recommend the arbitration of a claim against England which he had recommended that Congress should give him authority to determine and pay in order that the Government might have the "ownership" thereof, and for which he would exchange a bond of the United States.

In regard to these claims he said that our "convictions are firm and unalterable."

On the one hand, then, we have Great Britain ready to pay the private Alabama claims if a friendly power shall decide that she ought to pay them, and on the other hand we have the United States refusing to release England from the National Alabama claims, even if a friendly power should decide that she ought to pay the private Alabama claims.

How then can the Commissioners remove these differences?

WHAT SETTLEMENT WILL BE SATISFACTORY TO THE UNITED STATES.

In my judgment no "final and amicable settlement" is possible which does not contemplate the immediate payment of what I have called the private Alabama claims.

The United States claims, as we have seen, are of two kinds, private and national. The United States has refused and will refuse to arbitrate the private claims and leave the national claims undecided.

It might be possible to make a "final and amicable" settlement to the satisfaction of the people of the United States—

First, by a distinct and separate reference of the liability of England for the Alabama claims, both national and private. This reference being made on the whole case as the United States Government might desire to present it, and being made separate and apart from all other claims or classes of claims.

Second, by an absolute payment of a fixed sum in settlement of the private claims or an absolute agreement that the two Governments should appoint a joint commission to determine the actual amount of these claims with an agreement on the part of Great Britain that she should then pay the private claimants to the full amount at which their damages should be fixed by such commission.

In these two directions the solution of a "final and amicable" settlement can alone be found.

AN ARBITRATION OF NATIONAL AND PRIVATE CLAIMS ON THE WHOLE CASE AS MAINTAINED BY THE UNITED STATES.

If Great Britain would consent to a reference of our whole case, the United States might perhaps consent, though the fact that Great Britain had so often refused to make a full arbitration might justify a hesitancy.

Each nation might be willing to submit the claims national and private to the decision of a friendly power. But there are various difficulties in the way of such a reference being consented to by the British Government.

First. It would involve a consideration of all the circumstances under which the Queen's proclamation of neutrality was issued and continued.

This was an act of simple executive discretion. No one can deny but that the proclamation contributed largely to the destruction of the commerce of the United States, and was, in fact, the prime cause of the fitting out and arming of the Florida, Alabama, and other cruisers.

It would remain then for the arbitrator to consider whether that act was deliberate, seasonable and just, in reference to surrounding facts and in accordance with the requirements of the public law and practice.

Thus would be involved practically the motives of the English Government in authorizing that proclamation, and in continuing the rights granted by it.

A writer in the London *Times* of 19th February, 1869, appreciated this difficulty, when referring to what might have happened if the Johnson Clarendon convention had been ratified, he said:

> "If this argument had been pushed to extremes, *it would obviously have shaken the whole ground of arbitration.*"

Second. Before the arbiter also would come for his decision the national claim.

These claims or damages are as certain in fact as are the claims or damages by the owner of any vessel that was burnt by the Alabama, but their amount is immense, indefinite and only approximately determinable.

The liability also though certain is not direct and immediate. Neither are there frequent precedents in the history of nations for the voluntary payment of such damages.

An examination of the Alabama claims as presented by the United States, would thus involve the discussion of questions in which the feelings and passions of the two nations would be actively aroused, and in the end the decision instead of leading to peace might be the cause of war.

Third. It will be probably difficult for the two nations to agree on an arbiter. In view of the present unsettled condition of Europe, would England consent to submit the whole case, belligerency question, national claim, and all, to the Emperor of Russia or Prussia, or to the Government of France, and yet to what other arbiter would the United States consent?

Fourth. If some arbiter was agreed upon, he could not so thoroughly understand the whole case as do the members of the Joint High Commission, perhaps he could not even read the correspondence in original English. His decision when given would be but the decision of his law advisers, arrived at perhaps not without personal feelings of friendship or enmity to one of the parties, or with the desire to establish some principle of international law which might be of particular value to his own nation, but not to other nations whose commercial interests were of a different kind.

But no arbitration will be satisfactory to the people of the United

States which does not embrace *absolute submission of the whole question.*

Cannot then a satisfactory settlement be made to both parties without a reference?

Any settlement that the parties themselves would consent to will be much more satisfactory than the award of an arbitrator after the whole question had been pushed to extremes by each nation in the maintenance of its own position.

NO NEED OF ARBITRATION FOR LIABILITY FOR PRIVATE CLAIMS ALREADY ADMITTED.

I think that I have already shown that England's liability to make some compensation for the damages by the Florida, Alabama and other cruisers, has been established by the acts of her own Government since the Florida first escaped.

I notice now only a few of those.

First. The admission of Earl Russell that the escape of the Florida and Alabama was a scandal and a reproach to the English neutrality laws.

Second. The determination of the law officers to seize Lairds rams on suspicion, and to hold them till the Lairds could establish the legality of their voyage.

Third. The subsequent aproval of this seizure by a vote in the House of Commons when it was distinctly stated in debate that an approval and justification of that seizure would admit England's liability for the escape of the Florida and Alabama.

Fourth. The desire of Her Majesty's Government in 1865, after the war was over, to co-operate with the United States in amendments to their respective neutrality laws which should supply to them the deficiencies which experience had shown to exist certainly in the English law.

Fifth. The appointment by Her Majesty in 1867 of a commisssion composed of most eminent statesmen, jurors and lawyers "to inquire and report whether any or what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with our international obligations."

Sixth. In the recommendation of those Commissioners, men of the greatest experience and learning, that every future Alabama should be seized on suspicion and should be detained until her owner should establish to the satisfaction of the court that she was intended to be dispatched contrary to the enactment; and further that if any future Alabama should escape she should not be admitted into any port of Her Majesty's dominions.

These official acts of Her Majesty's officers seem to me to establish the liability of Great Britain for the destruction occasioned by the Florida, Alabama and other cruisers.

As yet this liability has not in fact been directly admitted by the government though some of Her Majesty's officers have in a certain way admitted the same.

I make no extract from the speeches and admissions of Cobden, Bright and Shaw-Lefevre. Their opinions are well known.

But note what Lord Stanley said at the Foreign Office in November, 1867; he had just offered to go to arbitration on the question of "moral responsibility," and the negotiations to that end were going on.

Meanwhile Sir Frederick Bruce had died and under these circumstances Mr. Adams called on Lord Stanley and threw out a suggestion as to the probable effect of this lamented death upon the pending negotiations.

This is the account of the interview given by Mr. Adams to Mr. Seward:

Adams to Seward, 2 Nov., 1867, vol 3, p 682.

"His Lordship said that there is really little difficulty in coming to a settlement so far as the merits of the question itself were concerned. He was well convinced the country would be perfectly ready to acquiesce in any decision that might be made even though it were adverse. But he intimated that the point of pride about leaving the right of recognition in any doubt was so great that it could not be so treated."

This extract shows how Lord Stanley felt when he was endeavoring to settle these claims on the grounds of "moral responsibility."

The liability he seemed ready to admit but he would not consent that the belligency question should be arbitrated.

Notice what he said nearly a year later.

On 6th March, 1868, after he had failed in his attempted negotiations and when in the House of Commons he sought to justify the Government for refusing to consent that the liability for the Alabama claims should be in any way determined by considerations of the reasons and motives under which the Queen's proclamation of neutrality had been issued, he said:

Vol. 5, p. 708, 6 Mar., 1868.
Hansard, v. 190. pp. 1150–1198.

"*I have never concealed my opinion that the American claimants, or some of them at least, under the reference proposed by us, were very likely to make out their case and get their money.* To us the money part of the affair is inappreciably small especially as we have on our side counter claims, which, if only a small portion of them hold water; and you can never tell beforehand how these matters will turn out; will reach to a considerable amount, and form a by no means unimportant set-off to the claims preferred against us. But I think if matters were fairly adjusted even if the decision went against us, we should not be disposed to grudge the payment. *The expense would be quite worth incurring, if only in order to obtain an authoritative decision as to the position of neutrals in future wars.* If, therefore, the Alabama claimants are kept out of what may be due to them, they ought to understand, and I think they will understand, that it is not by the act of our Government that this has been done."

Lord Stanley then contemplated and admitted that Great Britain was morally responsible for damages to the American claimants or to some of them at least.

Notice also what Stuart Mill said in the same debate.

After having argued that it was not worth while to exclude the belligerency question from arbitration he said:

"Perhaps I would not have risen if I had not wished to state how cordially I welcome those hints which have been thrown out by the noble lord (Lord Stanley) and the observations which have been made by my honorable friend (Mr. W. E. Forster) as to the possibility of our settling this question some other way than by arbitration."

"*Indeed I do not very clearly see what arbitration is especially required for.* The case is this: I believe there are few in this country now, and but for the last two speakers, I might have said I should hope there were none in this House, whatever might have been the case formerly, who were disposed to deny that we owed reparation of some sort, or in some degree to the United States; *it is quite clear that the noble lord thinks so, and, therefore, this not a case where we want arbitration. If we owe anything we must pay it; and what we want is some one to say, not whether we ought to pay, but how much.*"

These three extracts show that the liability may to some considerable extent be considered as admitted by the English Government.

INDEMNIFICATION FOR PRIVATE CLAIMS MAY SECURE A FAIR AND AMICABLE SETTLEMENT WITHOUT ARBITRATION.

But note what Mr. Forster said in the same debate for his words give us a key to a solution of the differences before the High Commission.

These are his words:

"They should further consider whether arbitration was the only means of settling the matter. Tremendous injury had been inflicted on American citizens by means of the attacks upon their ships, and if the present misunderstanding was not settled upon a principle which would carry with it the feeling and moral sense of both countries, there was reason to fear that whenever we engaged in war we would suffer in the same way. What naturally came forward under these circumstances was the wish that international law should be so arranged that in future the inhabitants of both countries should be prevented from carrying on private war, and if America should say in answer to that proposition, 'you must first make recompense for what is past,' why should not that matter be considered? *If the two countries—the greatest maritime nations in the world agreed to some international or some municipal law which would prevent the escape of these pirate vessels for the future, we might be quite ready to give indemnity for the past.*

"The noble Lord had alluded to the proposition of Mr. Seward. There were now several questions in dispute between the two countries and it is impossible to believe that a willingness on the part of Her Majesty's Government to settle them would not be responded to by the Government of the United States.

> "*He could not but think that if any statesman of high position in England were sent to America by the noble Lord with power to arrange all the matters in dispute they could all be arranged.*"

Thus three years ago Mr. Forster suggested in the House of Commons what in fact is the present Joint High Commission, and thus he suggests what may afford a "final and amicable settlement" of the Alabama claims.

Remembering that the English Government have offered to refer the claims to an arbitrator, who should decide the question on the grounds of a "moral responsibility," we go on to consider the means of solution suggested by Mr. Forster, which is to the effect that the English Government should compensate the individual claimants in consideration of some agreement between the two nations as to the future.

Indemnification to the United States citizens for the past and protection to both Governments in the future affords the best practical means for the restoration of cordial and amicable relations between the two countries, in the opinion of Mr. Forster.

We have seen (*ante*, p. 296) that Mr. Seward insisted that if the Alabama claims were arbitrated the private and national claims to the full extent that they had been presented and maintained by himself and Mr. Adams should be considered, and we have seen that if an arbitration of the Alabama claims is now to be made it must certainly go to the same extent and include the claims both private and national.

We have also seen that the English Government in 1868 contemplated a payment of the private claims in consideration of obtaining certain security for the future.

Notice now that at the same time Mr. Seward was insisting on this arbitration of the whole case he contemplated a settlement similar to that suggested by Mr. Forster.

He wrote to Mr. Adams on the 13th January, 1868, thus:

> "I have been singularly unfortunate in my correspondence if I have not given it to be clearly understood that a violation of neutrality by the Queen's proclamation and kindred proceedings of the British Government is regarded as a national wrong and injury to the United States; and that *the lowest form of satisfaction for that national injury that the United States* could accept would be found in an indemnity without reservation or compromise by the

British Government to those citizens of the United States who had suffered individual injury and damages by the vessels of war unlawfully built, equipped, manned, fitted out, or entertained and protected in the British ports and harbors in consequence of a failure of the British Government to preserve its neutrality."

In this same letter he suggests what is in fact a Joint High Commission.

"It was in view of all these existing sources of controversy that the thought occurred to me that Her Majesty's Government, if desirous to lay a broad foundation for friendly and satisfactory relations, might possibly think it expedient *to suggest a conference, in which all the matters referred to might be considered together, and so a comprehensive settlement might be attempted* without exciting the sensibilities which are understood to have caused that Government to insist upon a limited arbitration in the case of the Alabama claims."

So the suggestion for a Joint High Commission occurred to Mr. Forster and to Mr. Seward in 1868, and to each of them also occurred a basis for a final and amicable settlement without arbitration.

The proposition of Mr. Seward is to give up the national claim if the British Government would, without reservation or compromise, indemnify the citizens of the United States who have suffered individual injury and damages by the Florida, Alabama, Georgia, Shenandoah, Sumter, and other cruisers which were built, equipped, manned, fitted out, entertained or protected in British ports or harbors.

The proposition of Mr. Forster is that Great Britain would be ready to make this indemnification "if the two countries—the greatest maritime nations in the world—agreed to some international or municipal law which would prevent the escape of these piratical vessels for the future."

Both Mr. Seward and Mr. Forster in effect proposed that the indemnification shall be determined on and changes in the law made by a Joint High Commission.

WHAT INDEMNITY ASKED.

First, then, what is the indemnification which will be satisfactory to the United States?

Mr. Seward said, in effect, in the letter just quoted, that it was satisfaction for the damage by *all the cruisers.*

Such an indemnification will alone bring about a fair and amicable settlement.

The President can approve no less amount of indemnity, for in his last message to Congress he said to that body in effect that so convinced was he of the justice of all these claims that he desired Congress to give him power to pay these claims at their full value as determined by a commission, in order that the United States might obtain the ownership of the same.

The Senate cannot consent to any lesser amount of indemnity, for it has in effect refused to arbitrate these private claims because they were infinitely small in comparison with the national claims.

The people of the United States will not be satisfied with any less indemnification, for the public press almost unanimously sustained the action of the Senate as above stated.

It was for this extent of indemnification that Mr. Upton prayed that the Government would "demand redress for its citizens apart from all other claims."

This was the indemnification contemplated by the resolution in the Massachusetts Legislature which said that "any treaty between England and America, which may be submitted at any future time for ratification, which does not by its terms concede the liability of the English Government for the acts of her proteges, the Alabama and her consorts, will be spurned with contempt by the American people, and that a ratification thereof would be dishonorable to our nation and unjust to our citizens."

INDEMNIFICATION OF PRIVATE CLAIMS MUST BE DEFINITE AND CERTAIN.

But the Alabama claims must be settled by themselves, their importance and their amount demand and justify this.

English citizens may have just claims against the United States and they should be provided for, but the claims of the citizens of the respective nations should not be set off one against the other.

In November, 1867, Lord Stanley learned from Mr. Ford, then secretary of the British legation at Washington, that Mr. Seward had suggested the possibility of his lordship's proposing to merge this particular question of the Alabama claims in a mass of matters then remaining open between the countries, and lumping them all together in one treatment or negotiation.

He afterwards conversed with Mr. Adams in regard to this proposal and said:

> "A most serious difficulty would perhaps lie in the fact that the private claimants under what were, after all the gravest questions, might not be well content to see them liable to be mixed up and bargained away against other points in which they were not interested."

Notice what Mr. Adams replied:

> "I said that there was the more ground for such an objection in the fact that precisely such an event had happened in a former treaty of ours with France. The effect of it had been, in that case, that the country had received a benefit for the surrender of large claims for unlawful captures of private property at sea, but that from that day to this not a farthing of compensation had ever been made good by it to the owners of the claims thus abandoned." (See Adams to Seward, 24 December, 1867, vol. 3, p. 687.)

Mr. Adams during the past winter, in an address before the New York Historical Society, warned the Alabama claimants against any negotiation which set off their claims against other claims o British subjects or as a consideration for concessions obtained or territory acquired.

Such a settlement of the private claims will not be satisfactory.

The Johnson-Clarendon treaty provided that each government should pay to the other the amount awarded on any claim.

No set off was here comtemplated, though practically the result would have been the same, but each claim would have been distinctly awarded on and paid by the Government decided to owe the same. The claimant would then have had a distinct and definite claim for a sum certain which his own government had received on his account.

If Great Britain shall agree to pay the private Alabama claims they can be justly and speedily determined by a joint commission appointed for that particular purpose, and indemnification of such claims by concessions or set-off will not afford a final and satisfactory settlement.

GREAT BRITAIN SHOULD GIVE THIS INDEMNIFICATION.

Will the English Government consent to make this indemnification?

I have sought to establish her liability to this extent by the rules and precedents of international law under which for a violation of international duty less clearly defined, less clearly provided for, and much less open and harmful the United States gave and Great Britain received compensation.

I have tried to establish this liability by a reference to the history of international relations of the United States since 1793.

I have shown that the United States by using means in her power has repeatedly prevented the escape of "Alabamas."

I have shown that having failed to use all the means in her power to prevent such expeditions, she has made compensation for them, and I have shown that she has never but once refused to make such compensation, and then on the express declaration that she had used all the means in her power.

I have shown most certainly that Great Britain did not use all the means in her power to prevent the escape of the Alabama and other cruisers, and then throwing aside all precedent for the Alabama claims, I have tried to show that England herself has established them by what I will call the "*subsequents.*"

First. By the "subsequent" of Earl Russell who said the escape was a scandal and reproach.

Second. By the "subsequent" of the Attorney General who authorized the seizure of Lairds rams on suspicion, and said in justification thereof in the House of Parliament: "It was the duty of the Government to use all possible means to ascertain the truth, and to prevent the escape of vessels of this kind to be used against a friendly power."

Third. By the "subsequent" of the approval by the House of Commons of the seizure of Lairds' rams.

Fourth. By the "subsequent" of this statement made by Sir Hugh Cairns:

> "Either our Government must contend that what they did in September was unconstitutional or they ought to have done the same with regard to the Alabama and are liable."

Fifth. By the "subsequent" of the recommendations made by Her Majesty's Commissioners in 1867, as amendments to the English neutrality law necessary in order to fulfil all the obligations of neutrality.

Sixth. By the "subsequent" of the statement made by Lord Stanley in a debate in the House of Commons explaining a recent failure to obtain the consent of the United States that the private Alabama claims should be submitted for arbitration, these are his words:

> "I have never concealed my opinion that the American claimants or some of them at least under the reference proposed by us were very likely to make out their case and get their money."

Her Majesty's members of the Joint High Commission can well agree to recommend to their Government that it shall give indemnification for those private Alabama claims that are established by such precedents and such "subsequents," provided the United States will relinquish the national Alabama claims which rests upon the same precedents and "subsequents."

But this indemnification would not be asked for nor given without value, and that value in a form which will eventually compensate both Great Britain and the United States for concessions that the one may make in giving and the other in accepting indemnification for the private claims.

SECURITY FOR THE FUTURE IS THE GOOD AND VALUABLE CONSIDERATION OFFERED TO EACH NATION.

The good and valuable consideration which Mr. Forster thought would be satisfactory to Great Britain, was this.

An agreement to "some international or municipal law which would prevent the escape" of Alabamas "for the future."

Mr. Forster expressed a need which had already been fully recognized by the English Government.

In 1861, Earl Russell thought Her Majesty's neutrality law was sufficient, later in 1862, he thought that it needed an amendment, but later the law officers advised against any change.

In 1863, he replied to the Liverpool ship owners that the law was "effectual for all reasonable purpose," but in 1865, he had seen the commerce of the United States swept from the ocean either through the defects of that law or of negligence in executing it and he desired to co-operate with the United States, in revising the neutrality laws of the two countries, "as a means of promoting peace and abating the horrors of war."

Thus he came to see the same need.

Lord Stanley felt the same need when he said in debate on 6th March, 1868:

> "The expense of payment, even if the decision went against us, would be quite worth incuring if only in order to obtain an authoritative decision as to the position of neutrals in future wars."

Lord Stanley and the Earl of Clarendon both afterwards recognized the need which Mr. Forster expressed when they desired that the Alabama claims should be referred to some sovereign or head of a friendly state who by his authority would render a decision which should hereafter be considered as a rule determining the duties of neutrals.

Lord Clarendon recognized this same need when, on the 6th November, 1869, he wrote to Mr. Fish—

"Her Majesty's Government fully agree with Mr. Fish in considering that it would be desirable to turn the difficulties which have arisen between the two Governments to good account by making the solution of them subservient to the adoption, as between themselves in the first instance, of such changes in the rules of public law as may prevent the recurrence between nations that may concur in them of similar difficulties hereafter."

The United States have also recognized this same need.

Mr. Seward recognized it, when, in 1861, he directed Mr. Adams to suggest to Earl Russell some amendment in the English neutrality law.

He again recognized this need when, in 1863, he asked Mr. Adams to suggest that England's law be amended in such a way "as to effect what the two Governments actually believe it ought now to accomplish," and when he said "that the President would not hesitate to apply to Congress for an equivalent amendment of the laws of the United States, although here such an amendment is not deemed necessary."

The United States have recognized this need in the English law in every demand they have made for the Alabama claims.

To the United States this need is not the need of some rule or principle that does not exist, but the need of a more clear and distinct recognition of a rule and principle fixed by the essential rights and duties of neutrals and belligerents.

Mr. Sumner recognized this need when he called the Johnson-Clarendon treaty a "snare," and said, "nor can it be forgotten that there is no recognition of the rule of international duty applicable to such cases; this, too, is left unsettled."

Mr. Bemis recognized this need when he said "that the United States Senate in rejecting the Johnson-Clarendon treaty rendered a favor to the British Government itself in preventing the further prosecution of a scheme of settlement so defective in its statement of the subject-matter of the dispute and so totally devoid of any recognition of principle upon which satisfaction might thereafter be awarded or accepted."

Thus each nation is at present desirous that the Alabama claims shall not be settled without a recognition of the principle on which they are based, and that in the settlement some provision shall be made which shall prevent the recurrence of similar claims.

The United States desires the recognition of the principles in accordance with which it has claimed that the Alabama claims are just.

Great Britain desires some principle to be recognized, for she sees that under the rules of neutrality as practiced by her, the commerce of a nation with which she was not at war has been destroyed by cruisers fitted out and manned in her ports, and having in no way received aid or protection from a belligerent nation unless it was the aid and protection given by a flag that was never seen in a belligerent port, and that flag entitled to no protection except that given it by the Queen's proclamation.

The United States desire reparation for the past and security for the future.

Great Britain seeing what destruction her system of neutrality has caused and fearing that she may become a belligerent nation is anxious to protect her commerce from death at the hand of a nation who has decided to preserve "a strict and impartial neutrality."

PRINCIPLES THAT CAN BE ESTABLISHED IN THE SETTLEMENT.

What then are the principles or rules of public law which can be established in this settlement?

They are those on which the United States has maintained that the Alabama claims are just and are in substance these:

"*First.* Every sovereign power must decide for itself on its responsibility the question whether or not it will at a given time accord the status of belligerency to the insurgent subjects of another power.

"*Second.* The rightfulness of such an act depends upon the occasions and circumstances, and it is an act like the sovereign act of war which the morality of the public law and practice requires should be deliberate, seasonable and just in reference to surrounding facts; national belligerency indeed, like national independence, being but an existing fact officially recognized as such without which such a declaration is only the indirect manifestation of a particular line of policy.

"*Third.* Such a declaration may be precipitate and premature, and may directly or indirectly result in damages to a friendly nation.

"*Fourth.* The circumstances attending such a declaration and the continuance of the rights granted under it ought properly to be considered in the determination of any claims that may arise against the nation making such declaration on account of damages caused directly or indirectly by such declaration.

"*Fifth.* It is the international duty of a neutral nation to prevent by the use of all means within its power, any person within its territory from building, equipping, fitting out, arming, dispatching, or taking away any ship with intent or knowledge that the same shall or will be employed in the military or naval service of any belligerent nation.

"*Sixth.* This duty is independent of all or any domestic statute.

"*Seventh.* It is the duty and within the power of a neutral nation to detain any ship as to which the Executive branch of the Government shall be satisfied that there is a resonable and probable cause for believing that such ship within its territory has been or is being built, equipped, fitted out, or armed, or about to be dispatched or taken away to be employed in the service of any belligerent nation.

"*Eighth.* If a neutral nation fails so to detain such ship, or fails to use any other means within its power to prevent the escape of such ship, such nation thereby becomes responsible for all damages that may be occasioned by such ship to the citizens of a friendly nation.

"*Ninth.* It is the duty of a neutral nation to close its ports against any ship which has escaped from its ports contrary to its international obligations, as above set forth, and a failure to perform this duty will render such nation liable for the damages caused by such vessel to a friendly nation.

"*Tenth.* If the belligerent nation from which such a vessel afterwards receives a commission and flag is not a duly recognized independent nation, but is entitled only to claim recognition for that flag and commission by a declaration discretionary on the part of the neutral nation, but giving belligerent rights to war vessels carrying that flag, then such declaration shall be considered of no effect, at least so far as such particular ship or vessel is given protection by it in the ports of the nation having made such declaration, and from whose ports such vessel has been illegally dispatched.

"*Eleventh.* No armed vessel engaged in hostilies should be admitted into any neutral port which vessel does not hold a commission delivered to it in some port of military or naval equipment actually in the occupation of the Government by which she is commissioned."

On all these principles the English Government is to-day practically agreed.

The first four it admitted when it agreed in the Johnson-Clarendon convention that the private Alabama claims should be referred to some sovereign or head of a friendly state before whom should be laid the official correspondence that had taken place between the two Governments and any other written documents or statements that might be presented by either Government.

The next three and the ninth and tenth were practically admitted by the recommendations of Her Majesty's commissioners, (*ante*, p. 217,) who made their report for the purpose of bringing the domestic law into full conformity with international obligation.

The eighth and ninth have been practically admitted by Lord Stanley, Mr. Forster, Mr. Stuart Mill, and others, and would be admitted in the payment of the private Alabama claims as hereinbefore contemplated.

The eleventh is the recommendation of Mr. Vernon Harcourt, one of Her Majesty's commissioners, (*ante*, p. 228.)

The principles, therefore, which each nation would be willing and desirous of establishing would be in substance the same after the private Alabama claims had been paid.

HOW COULD THESE PRINCIPLES BE ESTABLISHED?

As between the two nations they could be directly recognized in the treaty which would provide for the payment of the private Alabama claims.

The neutrality law of the United States probably now affords all necessary means for carrying these principles into effect so far as legislation is necessary for their purpose.

The English law would give the necessary power for the same purpose should it be amended in accordance with the recommendations of Her Majesty's commissioners. (*Ante*, p. 217.)

These two laws would then be in harmony with each other and with the recognized principles of international obligation, or if they were not they could be amended for that purpose.

In this way, in the words of Mr. Forster, the two countries would have agreed to "an international or municipal law which would prevent the escape of these pirate vessels for the future," and for this he says "*we might be quite ready to give indemnity for the past.*"

In this way the treaty would contain, to quote the words of Mr.

Bemis, " a recognition of principles upon which satisfaction might thereafter be awarded or accepted."

ACCEPTANCE OF THESE PRINCIPLES BY OTHER NATIONS.

We have seen that Lord Clarendon wrote to Mr. Fish that Her Majesty's Government would be glad to co-operate with that of the United States for the adoption as between themselves in the first instance of some rules of public law that would prevent the recurrence between nations that may concur in such rules of similar difficulties hereafter.

There is here contemplated a determination of some rules of public law between the two nations, and afterwards an acceptance by other nations.

This acceptance might be obtained by the union of the United States and Great Britain in an expressed desire that representatives of other nations, should meet with their own representatives in a friendly conference to which these principles should be submitted. Or the two nations might directly ask other maritime nations to consent to and accept the same.

There would probably be but little difficulty in inducing other nations so to do.

The first four principles before set forth serve to protect a nation against rebellion; therefore each nation would find a reason for accepting the same.

As to the other principles, practically they are already recognized by other maritime nations.

Spain has recognized them and received recompence for a violation of them. Portugal has recognized them, and the United States law was amended and made more efficient at the suggestion of the Portuguese Minister. France has recognized them by the disavowal of the acts of M. Genet in 1797, and in the prevention of the fitting out of ships of war by the insurgents against the United States.

These principles are for the interests of all maritime nations, they tend to prevent war. If two nations go to war after these principles are established, each will fight its enemy as an enemy, and not see its commerce destroyed by an enemy disguised as a friend.

A mere recognition of these principles would in fact establish them for belligerent agents would not contract for vessels which they knew would be seized on "reasonable and probable cause," and which after they escaped could not be received in any port of the nation, whose neutrality they had violated, nor in the port of any nation, until they had received a flag and commission delivered to them in some port of military or naval equipment actually in the occupation of the belligerent.

Such then is the opportunity for settlement of the Alabama claims presented to the Joint High Commission, and such is the settlement which might be ratified by the Senate and people of the United States.

Indemnity for the private Alabama claims and security for the future to each nation against the recurrence of similar claims is the object to be aimed.

CONCLUSION.

I have now told the story of the Alabama claims, and have tried to show the just principles on which the United States have maintained them.

I have tried to establish these claims by showing that Great Britain did not only not do her whole duty to prevent the destruction of the commerce of the United States by the Florida and other cruisers, but that she really by the various acts and admissions of her public officers, has admitted that she did not perform her entire international obligations; that in 1865 she absolutely refused to submit that claim to arbitration; that in 1867 she consented to submit the private claims to a partial arbitration, and that in 1867 she consented that the whole question of the private Alabama claims should be referred to arbitration.

I have shown that such an arbitration was unanimously rejected by the people of the United States, because it did not contemplate any settlement of the national Alabama claims; because it did not afford any recognition of principles upon which satisfaction might thereafter be awarded or accepted and because the proposed arbitration was regarded as really a "snare" and tending to war rather than peace.

I have now shown that the two nations, each anxious to arrive at a "final and amicable settlement," have appointed some of their most distinguished citizens for the purpose of discussing the the mode of settling these claims.

I have then given the possible condition of a settlement, which might be accepted with honor by each nation.

Full, complete, and definite indemnification for the private Alabama claims may induce the Government of the United States to surrender the national Alabama claims, provided by that surrender they can obtain a distinct enunciation of the principles of neutrality which they practiced towards Great Britain in 1794, and which they have demanded that Great Britain should observe towards them during the years they were struggling with rebels.

The people of the United States feel that the damages done by the Alabama and other cruisers was not intended, if indeed, foreseen by the Government of Great Britain, but that it resulted primarily from a failure to understand the nature of the contest begun in 1861.

Under that misunderstanding the Queen's proclamation of neutrality was issued, on the 13th May of that year.

Read an extract from a letter written by Earl Russell on the day following the issuing of that proclamation, and it will explain why that proclamation was issued.

Negotiations had been going on for the annexation to Spain of the Dominican State. The English Government had been making friendly suggestions to Spain, and had at one time thought that the annexation might be opposed by the United States, but now, Earl Russell having talked with Yancey, Mann and Rost, and not having kept his first appointment with Mr. Adams, on the day on which this letter was written, sees only the late Union and a Northern and Southern Confederation; and he, even in a short time, expects that these two confederations will be so distinct and established that though the Southern one has only for a day received belligerent rights under the Queen's proclamation, yet, "sooner than at present appears likely," it is to become an independent nation and, instead of being an enemy to the Northern confederation, is to be its ally, and North and South then to join together and drive Spain from San Domingo.

This is what Earl Russell wrote:

Russell to Edwards, 14 May, 1861, vol. 1, p 219.

> "It appears also, from what has been stated to you, that there is no probability at present of any positive resistance to the measure, either by the Northern or Southern confederation of North America. But the Spanish Government should not too confidently rely on the permanent continuance of this indifference or acquiescence on the part of the North Americans. It is not impossible that when the civil war which is now breaking out shall have been brought to an end, an event which may happen sooner than at present appears likely, both the North and the South might combine to make the occupation of the Dominican territory by Spain the cause of serious difference between the North American Government and that of Spain."

The Minister that wrote this letter on 14th May, 1861, knew very little of the power of the United States, or of its form of Government, and it was in such ignorance that the Queen's proclamation was issued which was soon followed by the reception of the Sumter at Trinadad, and the escape of the Florida and Alabama from Liverpool.

The proclamation having been thus issued in haste and ignorance, the people of the United States believe the Government neglected to enforce the duties of the strict and impartial neutrality which that proclamation enjoined.

If the question of negligence "be discussed with frankness," writes Mr. Fish to Mr. Motley, "it must be treated in this instance as a case of extreme negligence, which Sir William Jones has taught us to regard as equivalent or approximate to evil intention."

Again, he says: "The question of negligence, therefore, cannot be presented without danger of thought or language disrespectful towards the Queen's Ministers."

This negligence was not by intent to destroy the commerce of the United States, but such has been the result that not even an open war could have caused greater damage.

The United States are desirous again to be a commercial nation, and are unwilling that the Alabama claims shall be settled without the distinct adoption or enunciation of some rules or principles which shall prevent the second destruction of her commerce by a nation who may, perhaps, follow the precedent set by Great Britain.

England is also desirous that no other nation shall adopt her ideas of "a strict and impartial neutrality," otherwise her great commerce would be to her a weakness rather than a strength.

Suppose, for a moment, some unnamed nation should hereafter desire to destroy the commerce of Great Britain without itself incurring the expense and danger of open war, and suppose that the case should be stated to the ministers of that nation as follows:

Statement of Supposed Case.

"Great Britain is threatened with a rebellion of its own citizens. The representatives of the rebels are here; the English minister, who can particularly give us information as to the extent of the rebellion and the means to be used by his Government to put down that rebellion has not yet arrived. The insurgents have 'no navy,' nor any 'commercial marine out of which to improvise public armed vessels.'

On this statement of the case the ministers of that unnamed nation, having read the story of the destruction of the commerce of the United States by the Sumter, Florida, Alabama, Georgia, Shenandoah, and other cruisers, knowing that their Government desired to maintain a strict and impartial neutrality, and yet accomplish the destruction of the commerce of England, would write out a plan of operations as follows:

Proposed Plan on Supposed Case.

"*First.* We will recognize the rebels as belligerents, and thus give to their flag and commission a right to protect any cruisers which they may be able to fit out from their own ports, and we will welcome the English Minister with a proclamation announcing such determination.

"*Second.* We will receive the first vessel which the rebels shall fit out, which we will call the Sumter, in order that it may have some name, and allow her to coal and obtain supplies in the stations which for our own purposes we have provided in various parts of the ocean.

"*Third.* Encouraged by this reception, the rebels will send out a few cruisers from their own ports, but finally, being unable to build any ships of war themselves, they will come and seek to build in our ports, and will make contracts for such ships-of-war with our ship builders, and possibly with some member of our parliament. Such building will be in violation of our duty, and we have provided a law for the punishment of persons who shall so attempt to build and equip vessels of war against nations with whom we are at peace; this law however, has never received any interpretation in the courts, and gives no power to detain any vessel on reasonable or probable cause that she is being armed and equipped in violation thereof. Under these circumstances the rebels can probably prevent the building from coming to the knowledge of the English Minister, and we will not ourselves examine into any case unless it be first discovered by him. If the English Minister or Consul discovers any case and complains to us of the same, we will refer his complaint to the Collector of the port who will be in sympathy with the rebels, and will report that there is no evidence against the vessel, particularly as he is of the opinion that no violation of the law is committed unless the vessel is fully armed.

"*Fourth.* If the English Minister shall furnish legal evidence we will delay action, and let the Collector or some other person notify the builders of the vessel that we cannot much longer refuse to seize her, and then let her start on a pretended trial trip.

"*Fifth.* We will suppose this vessel to be called the Alabama, and that when she has left the port where she was built, the law officers shall decide that she ought to have been seized.

"*Sixth.* If she shall then go to a port near by, and the English Consul shall so notify the Collector, who may have known of it before, and if a tug boat is known to be about to carry men to the Alabama, who admit to the surveyor of the port that they are going to join the gun boat, we will delay all action until they can reach her, and the tug-boat can return, when we will telegraph in various directions to stop her, but it will be too late.

"*Seventh.* In order to keep up a show of our strict and impartial neutrality, we will send orders to our Colonial ports to seize her if she should go there, and will admit to the English Minister that the escape of this vessel was a scandal and reproach to our laws.

"*Eighth.* If one such vessel, which we will call the Florida, should arrive at one of our Colonial ports, with guns on board and capable of being equipped as a war vessel within twenty four hours, and should be seized by one of our naval officers, who, not knowing our intentions, supposed that we desired the laws to be executed and who, on the trial, should give conclusive evidence that the Florida had been built and equipped at one of our ports in violation of law we will then have her defended by our Solicitor General and the judge will decide that he has no jurisdiction of a violation of our laws which did not take place in the port where the Florida may happen to be, and from that opinion we will take no appeal.

"*Ninth.* If there is evidence of a violation of law within the clear jurisdiction of the judge, and the present situation of the vessel is such that there can be no possible doubt but that she is intended as a war ship for the rebels, let the judge explain away the testimony and say that it is not satisfactory, though it may be so clear, that common sailors not knowingas yet our plan and purpose may be afraid to join the ship lest they should be punished as pirates. Be certain that no appeal is taken from the decision of the judge.

"*Tenth.* When the Alabama and Florida have escaped, let the Alabama be armed on the high seas from a vessel dispatched to meet her from one of our ports with her armament, and let the Florida be armed from a vessel which she shall tow from the port where she has just been released to the protecting shelter of some island owned by us.

"*Eleventh.* When these vessels have been thus armed let a commission be read and a flag hoisted which they have brought with them from one of our ports for that purpose.

"*Twelfth.* The rebels have no sailors so we will allow them to employ our sailors.

"*Thirteenth.* These vessels cannot enter any rebel ports, for they are blockaded by the English war vessels, we will therefore allow them to enter our ports in various parts of the ocean where we will permit them to coal and obtain other supplies, refit, and make 'the necessary repairs' after any conflict they have had or which will be requisite to give them 'considerable speed.'

"*Fourteenth.* The escape and reception of the Alabama and Florida will so discourage the English Minister and Consul that when they shall discover a similar attempt to fit out a vessel, we will call her the Georgia, they will not communicate to us any information regarding her, but will write home to their own government in order that it may make provision to capture her after she has escaped.

"*Fifteenth.* After the Georgia has escaped, the commerce of England will be so far destroyed that in a cruise of six weeks the

Georgia will not meet a single English vessel, though during that time she may see 'no less than seventy vessels in a very few days.'

"*Sixteenth.* If another vessel, which we will call the Alexandra, shall be seized, and the case brought to trial, a single judge can give an opinion for her release, and if the case is then appealed we can find such technicalities in the law as will prevent any satisfactory decision, and the vessel can be released.

"*Seventeenth.* If in the end the injuries to England should be so great that an attempt to fit out other war vessels (rams we will call them) by the same member of our Parliament who built the Alabama, might involve us in open war, then we will seize those vessels on the ground that there is danger of there being taken away by force from the ship yard of the man who has built them.

"*Eighteenth.* If in Parliament a distinguished counsel maintains that such seizure was unjustifiable and unconstitutional, and that if it is justified the justification will render us liable for the damages by the Alabama and Florida, then our distinguished Attorney General may say that the 'duty of the Government' compelled it 'to prevent the escape of vessels of this kind to be used against a friendly power.'

"*Nineteenth.* As the opinion of the Attorney General is beyond all doubt good law and has been established by the United States at a time when England was belligerent, the House cannot but sustain the action of the Government in seizing the rams.

"*Twentieth.* By this time the commerce of England will be destroyed, with the exception of a few whaling vessels who for three months in the year cruise in the Northern Pacific, and by this time the English Consul will have become so discouraged that he will report to his Government that he has no hope of preventing the escape of any other piratical expeditions from our ports.

"*Twenty-first.* Though the consul has knowledge of the project to equip a vessel, we will call her the Shenandoah, he will give no notice of it to us, and it will be impossible for England to show that we had any suspicion as to such vessel.

"*Twenty-second.* Let this vessel then be armed and commissioned as was the Florida and Alabama. She will need coal 'ample' for her 'contemplated cruise,' therefore let the rebel agents send a cargo of coal to one of our ports, which will be in the line of a voyage to the North Pacific, where this cruiser shall be ordered.

"*Twenty-third.* When the Shenandoah arrives at that port she will be hospitably received under the precedents already established and under 'confidential instructions,' and will then be allowed to go upon the Government slip, repaired under the advice of the Government Engineer, and thus obtain 'considerable speed,' which will be necessary for her 'contemplated cruise.' She can also there take in three hundred and fifty tons of coal which has been sent her from one of our ports. Of course the English Consul will earnestly protest against her reception, coaling and repairing, but let the Governor answer him that the Shenandoah is entitled to such reception 'whatever may be her previous history.'

"*Twenty-fourth.* The Shenandoah will probably need a larger crew, and the English consul may have evidence that three particular men and 'many others' are about to join her and that she is about to sail on the next morning. If he should go with this testimony to the Solicitor-General he may not arrive there till afternoon, when that law officer can say, 'My dinner, my dinner; that is what I want!' On hearing this the Consul will be insulted, and will go to other Colonial officers, who will send him from one place to another till he is finally discouraged. Meanwhile, forty or more of our subjects, 'good men and true,' will be added to the crew of the Shenandoah, and she can then go to the North Pacific all prepared for the destruction of the whalers.

"*Twenty-fifth.* As the English Government shall press us to execute our law, we will indict some of our citizens who have violated it. Most of them will be acquitted by the juries, who will sympathize with them, or, if convicted, we will fine them only a nominal sum, and if any of them plead guilty we will release them on their own recognizance, but we will not try any of them until the commerce of England is practically destroyed.

"*Twenty-sixth.* England will naturally expect that we should recall the proclamation which gave belligerent rights to her rebels, when it shall be shown that the only vessels entitled to the benefits of that proclamation were vessels built and equipped in our ports by our citizens in violation of the duties that proclamation enjoined and in the committing of which we have assured them that they would in 'no wise obtain any protection from us,' but would 'on the contrary incur our high displeasure,' but we will not however revoke that proclamation, but will protect the Shenandoah under it for six months after the surrender of the rebel Government.

"*Twenty-seventh.* The English Government may reasonably expect that we should make some remonstrance to the rebels to whom we have given belligerent rights and whose agents have been actually engaged in violating our neutrality, but we will not do so. As we have not official intercourse with those people and as the rebels are not responsible for the way in which they carry on the war we will write only occasional letters to their agents and when we do write, we will write in such a way that those agents will rejoice, that we have succeeded in making the English press 'howl.'

"*Twenty-eighth.* When the commerce of England is either destroyed or put under our flag and it becomes a somewhat difficult question for the captain of the Alabama on his quarter deck to decide 'on his own convictions,' whether a vessel that has been captured belongs to England or to our own citizens, we will write a letter to the rebel agents and ask them to send it to their Government with whom we are unable to communicate officially, because to us they are only rebels with belligerent right, and as their ports are so effectually blockaded that we cannot communicate with them, we will also enclose a copy of this letter to the English Minister and ask that the General of the English army may send it through his lines by a flag of truce. In this letter we will tell the rebel Government for the first time that the proceedings of their agents during the last four years in fitting out the Florida, Alabama, Georgia and Shenandoah were 'totally unjustifiable and manifestly offensive' to our Government, and ask them to promise not to do so any more.

" *Twenty-ninth.* By the time our letter is returned to us with the answer that the rebels could 'not under any circumstances consent to hold intercourse with' us in the way in which we tried to hold intercourse with them, and which was the only possible way for us to hold such intercourse, the rebel General who sent back our letter with a statement that his government could not recognize it as authentic, will have surrendered with all his force, and England's army will relieve us of the necessity of taking any further steps in the matter.

" *Thirtieth.* If the vessel we have called the Sumter shall arrive in one of our ports, and be there hemmed in by the war vessels of England, we will allow her to be disarmed, sold to one of our citizens, brought to another of our ports where there will be abundant opportunity for re-fitting her, and after she has been re-fitted, we will allow our citizens to load her with arms and ammunition and send her to the rebels.

" *Thirty-first.* If the cruiser we have called the Alabama, shall engage in fight with Her Britannic Majesty's ship Hatteras, we will allow her to make 'the necessary repairs, after her conflict,' in our ports, and if having engaged in fight with Her Britannic Majesty's ship Kearsarge, her officers and crew shall be in danger of capture, some of our citizens will be on hand to receive them.

Thirty-second. If the vessel we have called the Georgia shall return to our ports having found that the destruction of England's commerce had been already accomplished, we will allow her to be sold and tranferred to one of our citizens, which transfer can easily be made, as during a part of the time that she has been under the rebel flag she has been registered in the name of another of our citizens. If after she goes to sea she is captured by England, we will demand that a vessel seized under our flag, and claimed by our citizens, 'shall be brought with as little delay as possible for adjudication into the proper prize court, in which the claims' of our citizens 'will be tried according to those recognized principles of international law which govern the relations of the belligerent to the neutral,' though we have never made any such demands in regard to vessels that have been captured by the Florida, Alabama, or by the Georgia herself, for which last vessel we now ask a condemnation by the proper judicial tribunal. Up to this time the proper judicial tribunal for the rebels has been the quarter decks of the Florida, Alabama and Georgia. Our action in this matter may not seem consistent but it will accomplish its purpose.

"*Thirty-third.* If the vessel, some might call her the pirate Shenandoah, shall return to our ports, 'with due regard to the safety of her crew and the facilities for returning to their respective homes,' even if she has 'made a last great holocaust' of ten English whalers, though at the time her captain knew that Dublin had been captured, and that the Queen had been assassinated, we will receive this vessel in our ports, though six months have since elapsed, give protection to her officers and notify her crew, forty of whom as our own citizens had enlisted in one of our ports through the negligence of our officers, to answer 'from Tipperary' as their names are called, and then they can return safely to their wives, who have been drawing half-pay from some of our banking houses, while their husbands have been away.

"*Thirty-fourth.* This plan if faithfully carried out will destroy more than two hundred and fifty vessels belonging to English citizens, and in consequence thereof more than seven hundred other vessels will be transferred to our flag and we shall then be able to control the carrying trade of the world.

"*Thirty-fifth.* This plan if faithfully adopted will also greatly add to the hopes of the rebels, increase the probabilities of their success and cause a greatly increased expenditure by England of life and treasure, and thereby her debt will be increased to the extent of hundreds of millions of pounds.

"*Thirty-sixth.* It must be remembered, however, that this same plan may afterwards be adopted by some other nation against us if we should unfortunately become engaged in war, therefore as soon as England has subdued the rebels, whom we recognized, we will ask her to 'let bygones be bygones, to forget the past, and turn the lessons of experience to account for the future,' and to co-operate with us in an attempt to make those improvements in international law which have been proved to be necessary 'as a means of promoting peace and abating the horrors of war; and a work therefore which would be worthy the civilization of our age and which would entitle the governments which achieved it to the gratitude of mankind.' "

It is to be hoped that no Ministers may ever give such advice as this just supposed, but if the Alabama claims should remain unsettled or be settled without the establishment of any rule or principle upon which satisfaction might be awarded or accepted, is it not quite probable that such advice might be given in very strict accordance with that system of neutrality which has destroyed the commerce of the United States, and is it not still more probable that the citizens of some unnamed nation, without any such plan or intention on the part of the Government might make use of these very precedents for dispatching Alabamas and Shenandoahs?

Let no one think for a moment that I imagine that the destruction of the commerce of the United States was foreseen, much less planned, by Her Majesty's ministers.

The first step was taken in ignorance and haste, when it should have been taken with knowledge and deliberation. It was difficult to recover the position lost which had before been one of absolute freedom, but which was thereafter one of restraint. That step being in the wrong direction the effect of it led to no good result.

It made the negligence of Her Majesty's officers at home and in the colonies effective, and the commerce of the United States was destroyed in a way that could never have been contemplated, or if contemplated, could never have been planned in a manner so destructive.

But what if the ministers of some unnamed country should hereafter plan the destruction of the commerce of England in the way I have supposed, can there be any doubt but that that destruction would be accomplished unless, perhaps, Great Britain might say as did Mr. Adams to Earl Russell at the time the rams were building "this would be war," and prefer to make the unnamed nation an open rather than a masked enemy.

But suppose that this plan had been made, and accomplished its purpose, and commissioners should go to Great Britain asking that she should co-operate with them in the revision of their respective neutrality laws as "a means of promoting peace and abating the horrors of war." What could the British commissioners say to them?

If the present Joint High Commission shall fail because Great Britain refuses to indemnify the private claimants, or to make some other final and amicable settlement, the English Commissioners could then only say and not without reason:

"You have followed too closely the precedents set by us. You have destroyed our commerce by design and intention, we destroyed the commerce of the United States through ignorance and neglect.

Our ministers did not fully understand the impending struggle; when they wrote of the 'late Union' and the 'Northern and Southern Confederations,' they had just talked with the rebel commissioners who had told them of the great resources of the South, and promised to exchange cotton for our manufactures.

"Our ministers neglected to wait the coming of Mr. Adams; they did not understand that the announcement of an impending blockade was really but the closing of domestic ports; they were over anxious to protect Englishmen from the pains and penalties of piracy; and they were two eager to give recognition to a flag which had never yet been seen on the ocean. After they had once determined to maintain a strict and impartial neutrality they fonnd their law was not efficient for the purpose, but hesitated to ask parliament to amend the same, for the sympathy of the people was, strange to say, to a considerable degree, on the side of slavery and rebels; they then made some attempts to enforce the law as it was, but by delays, sickness, leakage, negligence, and perhaps design on the part of some of Her Majesty's officers, the Florida and Alabama escaped. The Government gave orders to seize them, but one was released at Nassau by a judge who did not understand the law, or who was blind to the facts; when the other reached Jamaica she carried a flag, first hoisted on the high seas, which our Government recognised as giving protection, and she was welcomed when she should have been seized or refused admittance. One of our ministers admitted that the case of the Alabama was a scandal and reproach, and when we received evidence regarding other vessels we seized some of them even on suspicion. One, the Alexandra, which our judges released, the new Governor at Nassau seized. Others, the Laird's rams, were seized and the Government bought them, that they might effectually prevent their escape. The United States Consul and Minister became discouraged and gave our ministers no notice of the fitting out and dispatching of the Georgia and Shenandoah, which vessels were dispatched by the insurgents relying on the same hospitable welcome and reception that had been extended to the Florida and Alabama, and this they received, and thus our first wrong and negligence caused the destruction of the whaling fleet in the North Pacific.

"We afterwards admitted in a certain way that we were liable for the damages caused by these vessels and a Joint High Commission was appointed to discuss these claims and put them in the way of 'a final and amicable settlement,' but our commissioners would not consent to leave the whole case to the arbitration of any European Sovereign for reasons that the history of that time will explain, and unwisely they also refused to indemnify the private claimants on condition that the national claims should be abandoned and that both nations should by some official act establish more firmly the obligations of international neutrality at least as between themselves.

> "Under these circumstances we cannot ask indemnity from you who have so closely followed the precedents set by us, but we are willing and desirous to unite with you, as our Commissioners should then have united with those of the United States, that we may prevent the precedents which we have made and you have followed from becoming part of the law of nations."

Suppose again that the British Commissioners should now consent to indemnify the private claimants, but that the negotiations would fail because the United States refuse to accept the same as a "final and amicable settlement," then if the destruction of the commerce of Great Britain should take place as is hereinbefore contemplated, the English Commissioners could answer, as I have just supposed, and could also say that if the Commissioners of the unnamed country would follow the precedents set by them still farther and would consent to indemnify British subjects for destructions by the second "Florida, Alabama, Georgia, Shenandoah and other cruisers," then the two Governments would unite in a declaration of rules and principles which should have been made and declared in 1871.

But suppose, on the other hand, a final and amicable settlement is now made; that the United States Commissioners agree to surrender the national claims provided they can obtain security for the future; that the English Commissioners agree to pay the private claims provided they can prevent their own acts from becoming precedents of "a strict and impartial neutrality;" that the two nations then unite in a treaty which shall declare those principles of neutrality which the United States have maintained since the time of Washington, and afterwards ask other nations to join with them in such declaration, then the destruction of English commerce will never be planned or accomplished in the way I have supposed and Great Britain will have paid but a small premium to insure the same against dangers which would otherwise threaten it under the precedents of her own neutrality.

Compare twenty millions of dollars with the value of that commerce and you will arrive at the rate of premium at which Great Britain may be able to insure her merchant marine for all future time, except against the lawfully built, equipped, and commissioned war vessels of an independent nation, her open enemy, and this rate will be found to be much lower than the merchants of New York paid to insure their ships for a single voyage against the Alabama, and very much lower than the whaling merchants of New Bedford paid three months after Richmond had fallen and Lee had surrendered, against dangers by the Shenandoah, which was then making "holocausts" in the North Pacific, having received at Melbourne the needed repairs, an "ample supply" of coal, and more than forty "good men and true" for her "contemplated cruise."

It is more easy to give reasons why a settlement such as I have contemplated, should be satisfactory to the English people than to show why it should be satisfactory to the people of the United States.

They must find their satisfaction in the indemnification for private damages, in the establishment of principles which Washington maintained, in the security for the future and "in the interests of peace."

Whatever may be the position of the United States mercantile marine to-day, it is destined again to compete for the carrying trade of the world.

The interests of the United States are in the maintenance of peace and in the enlargement and establishment of all those principles which would enable a nation to prevent its citizens from engaging in war, when it has determined to be at peace.

In a final and amicable settlement, such laws can be placed upon the statute books of the two nations in the treaties between them, and in their treaties with other nations, as by their very existence shall thereby enable a neutral nation to prevent either its own citizens or a belligerent from involving it in war.

The United States will have gained much if England shall agree that she will never again welcome rebel agents with belligerent rights and a navy, and if the United States shall have made it certain that no future Secretary of State shall have occasion to write of the minister of any future belligerent nation as wrote Jefferson of M. Genet.

(*Ante* p. 249.) "When the government forbids their citizens to arm and engage in the war, he undertakes to arm and engage them. when they forbid vessels to be fitted in their ports for cruising on nations with whom they are at peace, he commissions them to fit and cruise."

In view of all these circumstances, is it unreasonable to hope that the Joint High Commissioners may unite in recommending to their respective Governments a mode of settlement by which one nation shall yield its national claims, which it knows to be immense in amount, and believes to be just under the obligations of international law, and the other shall compensate United States citizens for such damages as it seeks in the future to avert from its own citizens, and in consideration of this payment and yielding, the two nations shall then join hands in the establishment of rules of domestic and public law, which in the words of the Earl of Clarendon "will redound to the mutual honor of both countries, and if accepted by other maritime nations have an important influence towards maintaining the peace of the world?"

The members of the Joint High Commission have together visited the tomb of Washington.

There they must each have remembered the duties of a strict and impartial neutrality as declared by Washington in 1794, and in that recollection they can each find an argument and a plan for a final and amicable settlement.

I have already told the story of Washington's enforcement of the duties of neutrality, simply by giving the headings of its chapters.

Here is an abstract of that story as given by Sir Roundell Palmer, Her Majesty's Attorney General, in the House of Commons on 23d February, 1864.

He was seeking to defend the action of the Government in seizing Lairds rams, against members of the House who had accused the Government of "pusillanimity and of acting under the dictation of the American Government and sacrificing the honor of the country."

I do not italicise his words, for they are all powerful to the maintenance of the justice of the United States position of to-day.

He said:

Vol. 5, p. 495, 23 Feb. 1864, Hansard v. 173, pp. 955–1021.

"It appears to me that nothing more vitally concerns the honor of this country than a strict and scrupulous observance, now that we are neutrals, of those rules which were laid down when we were belligerents, and if there be any rule of international law on which we have insisted more strongly than another, it is that neutrals should not be permitted to supply ships of war to belligerents. Allow me to call attention to the position which we have taken on this subject; for I cannot conceive anything more disgraceful or more calculated to lower this country in the eyes of the world, than the reproach, assuming to be well founded. 'Your rules of international law are elastic, contracting or expanding, according to your temporal interests; you lay down a law as belligerents, which you will not as neutrals submit to.' As long ago as 1793, we emphatically insisted that the American Government should not supply France with whom we were then engaged in hostilities, with vessels of war. We required them to detain those vessels, and Washington did detain them, before any Foreign Enlistment Act was passed. Washington not only detained the vessels at our instance but he proposed and carried in Congress the American Foreign Enlistment Act, as his enemies then said, at our dictation. Precisely the same attacks which are now directed against Her Majesty's Government in this House were then directed against Washington in Congress. There were members of Congress who said that he was truckling to England and allowing the English ambassader to dictate to him; they lamented the humiliation of their country and declared that the stars and strips had been dragged in the dust. But that great man despised the imputation of cowardice, he was strong enough not to fear to be thought afraid, and in spite of clamor—for there will always be violent and excitable men in all popular assemblies—Washington pursued the course which he knew to be just, and at the same time best calculated for the interest and welfare of his own country.

"He passed the Foreign Enlistment Act, and a treaty was subsequently entered into stipulating, among other things, for the restoration of prizes, captured by vessels that were fitted out in American ports.

"I wish to impress upon the House that as far as the enforcement of their Foreign Enlistment Act is concerned, we have absolutely no grievance against them. They have again and again restored prizes captured in violation of that act. As recently as the Russian war, in a case where we complained that a vessel called the Maury was fitted out in violation of the Foreign Enlistment Act, they immediately detained that vessel, her clearance was stopped, and an inquiry was subsequently directed, and that inquiry conducted entirely to our satisfaction, ended in our expressing a belief that there were no real grounds for the suspicion entertained. In the interest of peace and amity between the two countries, therefore, I wish the House to understand that we have no grievance against them with regard to the Foreign Enlistment Act, and that it deeply concerns our honor to enforce the Foreign Enlistment Act."

Such is the tribute given by Her Majesty's Attorney General to the first President of the United States, who having but just sheathed his sword against Great Britain, and said good bye to La Fayette, worked out that system of neutrality between France and Great Britain in 1794, on which, as founded upon duty and international obligations, the United States have maintained the Alabama claims.

Fresh from the tomb of Washington, how can the English Commissioners, remembering the words of Sir Roundell Palmer, refuse at least to indemnify the private Alabama claimants?

Almost in sight of Mount Vernon, how can the American Commissioners recommend any final and amicable settlement to the Senate, which does not at least provide for a final, distinct and absolute payment of the damages to the citizens of the United States?

This was the satisfaction Washington thought to be "incumbent" on him.

This was the satisfaction Great Britain received from the United States when Washington hesitated to "employ force."

This was the "indemnity for the past," which Mr. Forster thought Great Britain would be "quite ready to give" in consideration of security for the future.

This was the "expense" Lord Stanley said would be "quite worth incuring."

This was the "indemnity without reservation or compromise' for the damages by the vessels of war unlawfully built, equipped, manned, fitted out, or entertained and protected in the British ports and harbors in consequence of a failure of the British Government to preserve its neutrality which Mr. Seward said was "the lowest form of satisfaction for its national injury," which "the United States could accept".

This was the "expense" President Grant recommended Congress should give him power to incur, so that the Government might have the "ownership of the private claims."

Security for the future is the good and valuable consideration offered to each nation.

Great Britain may insure her commerce at a small premium.

The United States, by the release of its national claims, may establish firmly, in the interests of peace, those duties of a strict and impartial neutrality, which her first President maintained against a friend and in favor of a recent enemy when no neutrality law gave him power to prevent or punish.

APPENDIX.

LIST OF VESSELS DESTROYED AS SHOWN FROM THE PAPERS FILED AND PRINTED BY THE STATE DEPARTMENT.

By the Alabama.

Alert	Ship
Altamaha	Brig
Amanda	Bark
Amazonian	"
Anna F. Schmidt	Ship
Areal (Bonded)	Steamer
Baron De Custine (Bonded)	Brig
Benj. Tucker	Ship
Bethia Thayer Bonded	"
Brilliant	"
Chas. Hill	"
Chastelaine	"
Clara L. Sparks (detained)	Schooner
Conrad	Bark
Contest	Ship
Corsair	Schooner
Crenshaw	"
Dorcas Prince	Ship
Dunkirk	Brig
Elisha Dunbar	Bark
Emily Farnham (released)	Ship
Emma Jane	"
Express	"
Golden Eagle	"
Golden Rule	"
Harriet Spalding	Bark
Hatteras	Gunboat
Highlander	Ship
Jabez Snow	"
John A. Parks	"
Justina	Bark
Kate Cory	Brig
Kingfisher	Schooner
Lafayette No. 1.	Ship
" 2	Bark

Lamplighter	Bark
Lauretta	"
Levi Starbuck	Ship
Louisa Hatch	Ship
Manchester	"
Martha Wenzell (released)	Bark
Martaban	Ship
Morning Star (bonded)	Ship
Nina (bonded)	Schooner
Nora	Ship
Nye	Bark
Ocean Rover	"
Ocmulgee	Ship
Olive Jane	Bark
Palmetto	Schooner
Parker Cook	Bark
Punjaub (bonded)	Ship
Rockingham	"
Sea Bride	Bark
Sea Lark	Ship
S. Gildersleeve	"
Sonora	"
Starlight	Schooner
Talisman	Ship
Texan Star	"
Thomas B. Wales	"
Tonawanda (bonded)	"
Tycoon	Bark
Union (bonded)	Schooner
Union Jack	Bark
Virginia	Ship
Washington (bonded)	Ship
Wave Crest	Bark
Weather Gage	Schooner
Winged Racer	Ship

By the Florida.

Avon	Ship	Lapwing	Bark
B. F. Hoxie	"	Margaret Y. Davis	Schooner
Clarence	Brig	M. J. Colcord	Bark
Commonwealth	Ship	Mondamin	"
Caraisanne	Brig	Oneida	Ship
Crown Point	Ship	Red Gauntlet	"
David Lapsley	Bark	Rienza	Schooner
Electric Spark	Steamer	Southern Cross	Ship
Estelle	Brig	Southern Rights (bonded)	"
Francis B. Cutting	Ship	Star of Peace	"
George Latimer (Bonded)	Schooner	Sunrise (bonded)	"
General Berry	Bark	Varnum H. Hill (bonded)	Schooner
Golconda	"	William B. Nash	Brig
Greenland	"	Windward	"
Harriet Stevens	"	William C. Clark	"
Henrietta	"	Zelinda	Bark
Jacob Bell	Ship		

By the Georgia.

Bold Hunter	Ship	Good Hope	Bark
City of Bath	"	John Watt (bonded)	Ship
Constitution	"	J. W. Seaver "	Bark
Dictator	"	Prince of Wales "	Ship
George Griswold (bonded)	"		

By the Shenandoah.

Abigail	Bark	Isaac Hawland	Ship
Adelaide (bonded)	"	Isabella	Bark
Alina	"	James Murray (ransomed)	"
Brunswick	Ship	Jireh Swift	"
Catharine	Bark	Kate Prince (bonded)	Ship
Charter Oak	Schooner	Lizzie M. Stacy	Schooner
Congress	Bark	Martha	Bark
Covington	"	Nassau	Ship
Delphine	"	Nile (bonded)	Bark
D. Godfrey	"	Nimrod	"
Edward	"	Pearl	"
Edward Cary	Ship	Sophia Thornton	Ship
Euphrates	"	Susan	Bark
Favorite	Bark	Susan Abigail	Brig
Filmore	Ship	Waverly	Bark
Gen. Pike (ransomed)	Bark	William Thompson	Ship
Gipsey	"	William C. Nye	Bark
Harvest	"		
Hector	Ship		

By the Tacony, a tender of the Florida.

Ada	Schooner	Isaac Webb (bonded)	Ship
Arabella (bonded)	Brig	Z. A. Macomber	Schooner
Archer (recaptured)	Schooner	Marengo	"
Byzantium	Ship	Ripple	"
Elizabeth Ann	Schooner	Rufus Choate	"
Florence (bonded)	"	Shattemuc (bonded)	Ship
Goodspeed	Bark	Umpire & Wanderer	Brigs

By the Lapwing, a tender of the Florida.

Kate Dye (bonded)	Ship		

By the Tuscaloosa, a tender of the Alabama.

Living Age	Ship	Santee (bonded)	Ship

By the Clarence, a tender of the Florida.

Alfred H. Partridge (bonded)	Schooner	Mary Alvina	Brig
		Mary Shurdler	Schooner
Caleb Cushing	Cutter	Tacony	Bark
Kate Stewart	Schooner	Whistling Wind	"

By the Nashville.

Harry Birch	Ship	Robert Gilfillan	Schooner

By the Olustee.

A. J. Bird	Schooner	Empress Theresa	Bark
Arcole	Ship	T. D. Wagner	Brig
E. F. Lewis	Schooner	Vapor	Schooner

By the Sumter.

Abbie Bradford (recaptured)	Schooner	Joseph Moxwell (released)	Bark
Albert Adams (released)	Brig	Joseph Parkes	Brig
Arcade	Schooner	Louisa Kilham (released)	Bark
Ben Danning (released)	Brig	Macpias (released)	Brig
Cuba (released)	"	Montmorency (bonded)	
Daniel Trowbridge	Schooner	Naiad (released)	Brig
Ebenezer Dodge	Bark	Neapolitan	Bark
Golden Rocket	Ship	Vigilans	Ship
Investigation (bonded)		West Wind (released)	Bark

By the Retribution.

Emily Fisher	Brig	J. P. Ellicott	Brig
Hanover	Schooner		

By the Sallie.

Betsy Ames	Brig	Grenada	Brig

By the Savannah.

Joseph	Brig		

By the St. Nicholas.

Margaret	Schooner	Monticello	Brig
Mary Pierce	"		

By the Winslow.

Herbert	Schooner	Priscilla	Schooner
Itasca	Brig	Transit	"
Mary Alice	Schooner		

By the York.

G. V. Bakes (recaptured)	Schooner		

By the Tallahassee.

Adriatic	Ship	James Littlefield	Ship
A. Richards	Brig	J. H. Hawser	Schooner
Atlantic	Schooner	Josiah Achom	"
Bay State	Bark	Lamont Dupont	"
Billow	Brig	Magnolia	"
Carrie Estelle	"	Mercy Howe	"
Castine	Ship	North America	"
Coral Wreath	Brig	P. C. Alexander	Bark
Etta Caroline	Schooner	Pearl	Schooner
Flora Reed	Steamer	Rasselas	"
Glenavon	Bark	Roan	"
Goodspeed	Schooner	Sarah A. Boyle	"
Howard	Bark	Sarah Louisa	"
James Funk.	Pilot boat	Shokane	"
William Tell	Pilot boat		

By the Boston.

Lenox.	Bark	Texana	Bark

By the Chickamauga.

Albion Lincoln	Bark	M. L. Patter	Bark
Emma L. Hall	"	Shooting Star	Ship

By the Echo.

Mary S. Thompson	Brig	Mary Goodell	Schooner

By the Jeff. Davis.

D. C. Pierce	Bark	John Welsh	Brig
Ella	Schooner	Rowena	Bark
Enchantress	"	S. J. Waring (re-captured)	Schooner
John Crawford	Ship	W. McGilvery.	Brig

Statement of Insurance Premiums paid to cover the war risk during the Rebellion by Messrs. Willets & Co., New York, from 18*th June,* 1861, *to* 13*th September,* 1865, *both inclusive, illustrating the damages stated by Mr. Cobden, p.* 287 :

Vessel.	Amount Insured.	Whole Rate of Premium.	Marine Rate.	War Rate.	Amount Paid for War Rate.
1861.					
Sierra Nevada	$46,230 00	5	3	2	$924 60
Syren	8,000 00	5	3	2	160 00
Belle of the Sea	27,453 00	5	3	2	549 06
Andrew Jackson	46,529 00	5	3	2	930 58
Twilight	25,452 00	5	3	2	509 04
Thatcher Magoun	30,543 00	5	3	2	610 86
David Crockett	19,506 00	5	3	2	390 12
1862.					
Steamer Ariel	17,550 00	4	2½	1½	263 25
Xantho	1,998 00	5	3	2	39 96
Steamer Northern Light	3,708 00	4	2½	1½	55 62
Neptune's Car	20,517 00	5	3	2	410 34
Haze	17,382 00	5	3	2	347 64
Belle of the Sea	11,500 00			4	460 00
Euterpe	23,277 00	5	3	2	465 54
Belle of the Sea	15,000 00			5	750 00
B. F. Hoxie	26,136 00	5	3	2	522 72
Ontario	16,000 00	6½	4	2½	400 00
Mary L. Sutton	750 00	5	3	2	15 00
do	1,500 00	6	3	3	45 00
Steamer Sonora	3,000 00	5	2½	2½	75 00
Arabella	2,000 00	5	2½	2½	50 00
Windward	7,000 00	5	3	2	140 00
1863.					281 25
Logan	11,250 00	5½	3	2½	
Steamer Oriziba	4,000 00	6	2½	3½	140 00
do Sonora	22,000 00	5½	2½	3	660 00
do do	324 00	6	2½	3½	11 34
Messenger	36,600 00	7	3	4	1,464 00
Steamer St. Louis	2,500 00	6	2½	3½	87 50
Lotus	15,188 00	9	3	6	911 28
do	33,376 00	7	3	4	1,335 04
National Eagle	2,560 00	10	3	7	179 20
do	4,600 00	7¼	3	4¼	195 50
Steamer Golden Age	3,500 00	6	2½	3½	122 50
Steamer Sonora	6,000 00	6½	2½	4	240 00
Gaspee	21,621 00	8	3	5	1,081 05
Steamer Golden Age	12,000 00	4½	2½	2	240 00
do	2,025 00	5	2½	2½	50 63
Steamer Sonora	4,500 00	5	2½	2½	112 50
do St. Louis	7,500 00	4½	2½	2	150 00
Mary L. Sutton	4,600 00	8	3	5	230 00

Premiums paid by Willets & Co.—Continued.

Vessel.	Amount Insured.	Whole Rate of Premium.	Marine Rate.	War Rate.	Amount Paid for War Rate.
					$
1863.					
Charger	3,840 00	10	3	7	268 80
Steamer Golden Age	2,587 00	5	2½	2½	64 67
Gaspee	17,000 00	8	3	5	850 00
Mary L. Sutton	22,500 00	10	3	7	1,575 00
Arracan	60,225 00	9	3	6	3,613 50
do	10,000 00	11	3	8	800 00
Orizaba	2,200 00	5	2½	2½	55 00
Steamer St. Louis	3,000 00	5	2½	2½	75 00
Steamer Golden Age	10,000 00	5½	2½	3	300 00
do	13,000 00	4¼	2½	1¾	227 50
Rattler	18,000 00	8	3	5	900 00
Lizzie Moses	74,352 00	7	3	4	2,974 08
do	33,000 00	11	3	8	2,640 00
1864.					
Mary L. Sutton	11,600 00	8	3	5	580 00
Wm. Cummings	41,043 00	6	3	3	1,231 29
do	17,000 00	11	3	8	1,360 00
Gaspee	7,000 00	8	3	5	350 00
Cremorne	70,000 00	6	3	3	2,100 00
Flying Eagle	20,376 00	6	3	3	611 28
Steamer Constitution	299,000 00	4¼	2½	1¾	5,232 50
Fair Wind	118,784 00	6	3	3	3,563 64
do	28,000 00	5½	3	2½	700 00
Steamer Golden City	91,000 00	4¼	2½	1¾	1,592 50
do St. Louis	60,000 00	4¼	2½	1¾	1,050 00
Twilight	48,000 00	6	3	3	1,440 00
Steamer Golden City	2,500 00	4¾	2½	2¼	56 25
Haze	6,835 00	5½	3	2½	170 88
Steamer Golden Age	16,500 00	4¼	2½	1¾	288 75
Twilight	28,000 00	5½	3	2½	700 00
Hornet	92,703 00	5½	3	2½	2,317 57
do	3,779 00	5½	3	2½	94 47
Haze	142,830 00	5½	3	2½	3,570 75
do	36,000 00	5	3	2	720 00
Twilight	142,000 00	6	3	3	4,260 00
Panama	75,001 00	5½	3	2½	1,875 00
Uncle Sam	6,000 00	4½	2½	2	120 00
Hornet	51,931 00	5½	3	2½	1,298 28
Steamer Golden City	5,500 00	4¼	2½	1¾	96 25
do Sacramento	34,000 00	4¼	2½	1¾	595 00
Garabaldi	254,900 00	5½	3	2½	6,372 50
do	950 00	6	3	3	28 50
Hornet	31,002 00	5	3	2	620 04
Steamer Constitution	4,490 00	5	2½	2½	112 25
Panama	19,500 00	5	3	2	390 00

Premiums paid by Willets & Co.—Continued.

Vessel.	Amount Insured.	Whole Rate of Premium.	Marine Rate.	War Rate.	Amount Paid for War Rate.
					$
1865.					
Invincible	171,300 00	5½	3	2½	4.282 50
do	66,000 00	5	3	2	1,320 00
Grace Darling	175,401 00	5½	3	2½	4,385 02
Steamer Golden Age	6,600 00	4	2½	1½	99 00
Steamer Golden City	19,000 00	4½	2½	2	380 00
Monsoon	101,509 00	5½	3	2½	2,537 72
Steamer Golden Age	2,800 00	3½	2½	1	28 00
Belvedere	1,000 00	5	3	2	20 00
Hornet	15,411 00	5½	3	2½	385 27
Haze	1,600 00	5½	3	2½	40 00
Twilight	3,750 00	5½	3	2½	93 75
Panama	700 00	5½	3	2½	17 50
Steamer Golden City	36,000 00	3	2½	½	180 00
Cremorne	75,789 00	4½	3	1½	1,136 83
Steamer Constitution	40,000 00	3	2½	2½	200 00
do	7,400 00	4	2½	1½	111 00
Steamer Golden City	2,300 00	3½	2½	1	23 00
do	18,454 00	4½	2½	1	369 08
Steamer Sacramento	4,000 00	3	2½	½	20 00
Great Republic	228,500 00	3½	3	½	1,142 50
King Fisher	99,000 00	3½	3	½	495 00
In 1862 and 1863:					
Sierra Nevada	5,464 00	5	3	2	109 28
Belle of the Sea	2,185 00	5	3	2	43 70
A. Jackson	1,891 00	5	3	2	37 82
David Crockett	7,067 00	5	3	2	141 34
Euterpe	128,886 00	5	3	2	257 72
Haze	2,529 00	5	3	2	50 58
B. F. Hoxie	7,168 00	5	3	2	143 36
Total					$91,297 34

JX 238 A7 1871

Beaman, Charles Cotesworth
The national and private "Alabama claims"

PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET

UNIVERSITY OF TORONTO LIBRARY